

Gravel Appears Unlikely to Be Disciplined by Senate

REC-72

By Spencer Rich

Washington Post Staff Writer

Despite outraged comments from Republican senators, it appeared unlikely yesterday that the Senate would formally discipline Sen. Mike Gravel (D-Alaska) for his Tuesday night performance with the Pentagon papers.

"He will not be censured or made to apologize; I don't know what rule, regulation or code he's broken," said Majority Leader Mike Mansfield (D-Mont.).

Gravel amazed colleagues Tuesday when, after failing to gain the Senate floor for what he billed as an all-night speech on a major national problem, he hastily convened a meeting of a Buildings and Grounds Subcommittee and began reading aloud portions of what he said was the secret Pentagon history of the Vietnam war.

As the night wore on, his staff released to the press a 323-page document described as the first segment of the report.

Gravel finally stopped reading at 1:12 a.m. after bursting into tears several times and explaining that he was reading the secret document, which he said he obtained last Thursday from an unnamed private source, to make sure the facts about the war were revealed to the public.

Although he promised at that time to come back to the Senate yesterday and finish reading the three-part document, he didn't appear. His staff said he was "resting."

That did not prevent staff aides, however, from distributing to reporters lengthy segments of what were described as the still unread portions. One such segment, 350 pages, was titled, "The Overthrow of Ngo Dinh Diem." Another, about 200 pages, was labelled,

"Vol. II, The Air War In Vietnam, 1967."

Reporters quickly gobbled up the papers and had them duplicated.

Republican senators opened the day yesterday with angry demands that Gravel be punished for violating Senate rules.

Senate Minority Leader Hugh Scott (R-Pa.) said it appeared Gravel had violated Rule 36, requiring that all confidential communiques of the President to the Senate be kept secret.

Scott said it would be up to the majority party, the Democrats, to take the necessary action. Scott and Minority Whip Robert P. Griffin (R-Mich.), who had thwarted Gravel's attempt to gain the floor Tuesday night, met with Mansfield early in the day to discuss the matter.

Precisely what was said is not known, but Mansfield later said privately he didn't see that Gravel ought to be formally disciplined.

He also said he would not attempt to block Gravel directly from speaking should the Alaska senator seek to take the floor and finish reading from the still-classified manuscripts. But Mansfield said that should Gravel appear, he would "talk to him" and express concern over the situation.

"I intend to have a talk with Mike," said Mansfield. He said he would try to discourage him from a repeat performance.

But asked if he would try to censure or discipline him, the majority leader answered, "Nope. I don't intend to demean or castigate any senator without good, sufficient and overruling cause. Gravel feels this matter deeply and personally and that explains his motives."

There was a hint, however, that the Democratic leadership took steps during the day to:

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insure that Gravel would not be able to get the floor for a reading of further documents.

Democratic Whip Robert C. Byrd (W.Va.) bound the Senate early in the day into such a tight schedule—governed by rules of germaneness and a three-minute limit on speeches not directly related to legislative business—that it would have been virtually impossible for Gravel to get the floor for a long Vietnam-document speech.

Democratic leaders had considered putting the Senate into closed session if Gravel began reading classified material on the floor.

Later in the day, when the Supreme Court ruled in favor of letting The Washington Post and The New York Times

publish articles based on the Pentagon papers, there was wide agreement that any possibility of censuring Gravel had been all but wiped out.

Nevertheless, whatever the public response to Gravel's daring act, it appeared that his performance Tuesday night would hurt him in two ways—in the opinion of other senators, who now more than ever would tend to regard him as an unpredictable "wild man", and in the pocketbook.

One senator after another said privately that he was "amazed," "surprised" or "astounded." "It's highly irregular, I'll tell you that," said Warren G. Magnuson (D-Wash.), a powerful Democratic elder and sharp war critic.

"I may have to consider changing the rules on late

committee meetings," said B. Everett Jordan (D-N.C.), Rules committee chairman.

The pocketbook injury could result from a ruling that the meeting of the Public Works Subcommittee on Buildings and Grounds that Gravel called at about 9:45 p.m. Tuesday was illegal. In that case, Gravel would personally have to pay the stenotypist he hired to take down four hours of his document reading.

Jordan, one of two other subcommittee members, said he wasn't notified of the hearing. "They stuck something under my door" carrying notice of the meeting which was found the next morning, he said.

Lowell P. Weicker Jr. (R-Conn.), the other subcommittee member, called the meeting definitely illegal. "Underneath my door at 8 a.m. the next morning there was a notice," he said. It apparently had been placed there late Tuesday night, said Weicker, prior to the subcommittee meeting called by Gravel but after Weicker's staff left at 7:30 or 8 p.m.

"His handling of this was poor," said Weicker. He said he had discussed the matter with Jennings Randolph (D-W.Va.), chairman of the parent Public Works Committee, and he gathered that Randolph considered that the meeting had not been properly called and "the chairman had no intention of letting the Committee pay for it."

Randolph called the convening of the meeting "an error in judgment." He said it was not "a constituted meeting" of the subcommittee and covered matters "not germane to our committee's business." Jordan said he has asked the Senate parliamentarian, Floyd M. Riddick, for a ruling.

Sen. Barry Goldwater (R-Ariz.) told reporters at a

breakfast interview that Gravel "should have his security clearance removed."

While senators were discussing Gravel's performance, the Senate Foreign Relations Committee decided to press for an inquiry into the entire conduct of Southeast Asia policy, including a study not only of the Pentagon papers now in custody of the Secretary of the Senate but also of classified materials from its own files.

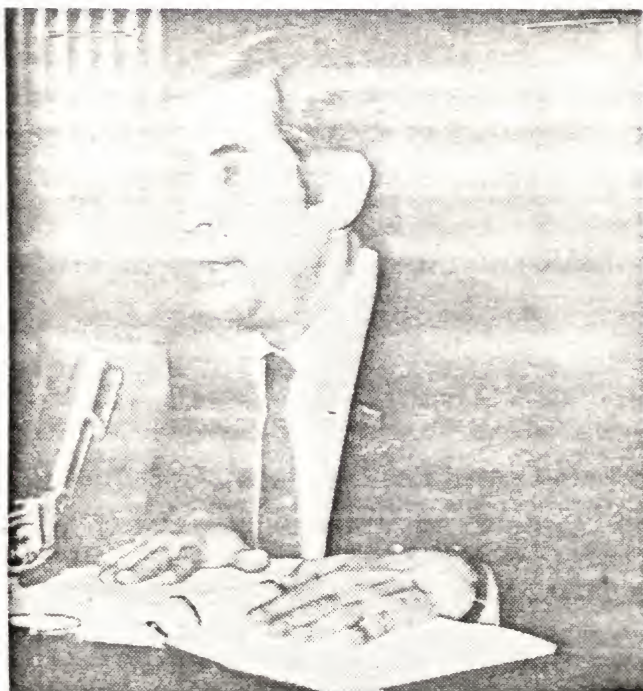
The committee is seeking \$250,000 for the study. Joint hearings by that committee and the Armed Services Committee also have been tentatively planned.

Chairman J. W. Fulbright (D-Ark.) said the documents read aloud by Gravel had not been obtained from the Foreign Relations Committee, which received a portion of the Pentagon papers—but not the whole set—from Daniel Ellsberg just over a year ago.

Fulbright also said it would be extremely difficult to proceed with his committee's study so long as temporary Senate rules keep the full Pentagon papers in the Secretary of the Senate's office unavailable to staff members.

The House, meanwhile, rejected, 273 to 112, a resolution of inquiry by Rep. Bella Abzug (D-N.Y.) that would have directed the President to provide Congress with more copies of the Pentagon papers and thereby make them more accessible. But this demand should be moot now that the Pentagon has said it will provide copies for every member.

In a related action, the House Foreign Affairs Committee voted 17 to 12 to recommend that the House also reject a resolution introduced by Rep. Paul N. (Pete) McCloskey (R-Calif.) calling for information from the executive branch about U.S. operations in Laos.



Associated Press

Sen. Mike Gravel reads Pentagon papers Tuesday night.

REVIEW and OUTLOOK

On Scapegoating

A medical doctor is fully aware that he is accountable for his actions; if nothing else, malpractice suits provide abundant proof. In fact, most professional and business people are similarly conscious of accountability.

Government officials surely should be accountable for their actions, too, and the Pentagon papers—cleared for full release by the Supreme Court yesterday—will help to assign responsibility for the errors in Vietnam. Yet it is being seriously suggested that those responsible for Vietnam policy, despite the revelations of the papers, are not accountable.

Said George Ball, former Under Secretary of State, on CBS television the other day: "Let me say there are no devils and there're no villains in this situation. There were people honestly expressing their own points of view against the backgrounds of their own experience."

He added that he was concerned about the fear on the part of a great many people in Washington that the nation may be embarking on a kind of finger-pointing and guilt-laying exercise. "I think we need some Abraham Lincolns and not Joe McCarthys at this point."

Now it is true that the Vietnam policymakers were not evil men. It is also true that it would be most unfortunate if the national discussion of Vietnam were to degenerate into an orgy of re-creation and scapegoating.

For our part, we believe there is still enough common sense around to prevent that consequence. In any event, the point is that the designers of the great Vietnam escalation, however well intentioned, made tragic mistakes—and are not being called to account. Instead of admitting error, the master designer builds pyramids to himself in Texas.

The prime mistake, it seems to us, was to flout one of the best pieces of military advice in existence: Don't get involved in a land war in Asia. Coupled with this was a rather unjustifiable ignorance of the problems of guerrilla warfare, plus the pursuit of dubious strategies and court-martials. The war can't constitute an investment out of all proportion to any possible gains.

This list adds up to a lot of sloppy

thinking at best, and it smacks far more of arrogance than of humility. It also tells a good deal about what's wrong with the present power of the Executive Branch and the Presidency in particular. The mistakes might possibly have been prevented or at least mitigated were not high officials able to operate in such isolation and secrecy—not to mention with such contempt for the Congress and the public.

Former Presidential Press Secretary George E. Reedy has concluded that the Presidency has "taken on all the regalia of monarchy except ermine robes, a scepter and a crown," and it is not easy to disprove him. In his book that came out last year ("The Twilight of the Presidency," World), he makes these trenchant observations:

Surrounding the President is an environment of deference approaching sycophancy; it fosters insidious factors. One of them "is a belief that the President and a few of his most trusted advisers are possessed of a special knowledge which must be closely held within a small group lest the plans and the designs of the United States be anticipated and frustrated by enemies." Obviously some information must be private, but equally obviously the secrecy bit is overdone in government.

"The steps that led to the bombing of North Vietnam," Mr. Reedy goes on, "were all discussed by a small group of men. They were intelligent men—men of keen perception and finely honed judgment. . . . But no matter how fine the intelligence or how thoroughgoing the information available, the fact remained that none of these men was put to the test of defending his position in public debate. And it is amazing what even the best of minds will discover when forced to answer critical questions. Unfortunately, in this as in many other instances, the need to comment publicly came after, and not before, irreversible commitment."

Well, what is done is done. But maybe one of the most significant and salutary—results of the mishandling of the Vietnam war will be a new rein on the White House instead of a reign within it. Of all people, high officials should be held accountable to the people for their deeds and their mistakes.

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 DAY GENERAL LEAD

BY UNITED PRESS INTERNATIONAL

THREE NEWSPAPERS WERE UNDER ORDERS TODAY NOT TO PUBLISH ANY MORE OF A CLASSIFIED PENTAGON REPORT PENDING FURTHER COURT ACTION, BUT A FOURTH PAPER, THE CHICAGO SUN-TIMES, PRINTED EXCERPTS FROM ANOTHER SECRET SOURCE, A STATE DEPARTMENT REPORT ON VIETNAM.

THE GOVERNMENT, IN APPEALING RULINGS WHICH GAVE THE NEW YORK TIMES AND WASHINGTON POST PERMISSION TO PUBLISH THE PENTAGON REPORT, OFFERED A COMPROMISE TUESDAY TO SET UP A TASK FORCE TO STUDY DECLASSIFICATION OF DOCUMENTS. THE POST REJECTED THE IDEA. THE TIMES DID NOT COMMENT.

THE BOSTON GLOBE, WHICH PUBLISHED ITS FIRST STORY ON THE REPORT IN TUESDAY'S EDITIONS, WAS ORDERED TEMPORARILY TO STOP FURTHER PUBLICATION AND TO TURN OVER ALL DOCUMENTS TO THE COURT. THE GLOBE SAID IT WOULD COMPLY WITH THE FIRST ORDER AND WOULD DECIDE TODAY ON THE SECOND.

APPEALS COURTS IN WASHINGTON AND NEW YORK TOOK THE POST AND TIMES CASES UNDER ADVISEMENT AND SAID THEY WOULD RULE SHORTLY. ANY RULING IS EXPECTED TO BE APPEALED IMMEDIATELY TO THE SUPREME COURT, WHICH IS SCHEDULED TO END ITS CURRENT SESSION NEXT MONDAY. TEMPORARY RESTRAINING ORDERS AGAINST FURTHER PUBLICATION REMAIN IN EFFECT ON THE TIMES AND POST.

A HEARING ON THE GLOBE'S CASE WAS SCHEDULED FOR 10 A.M. (EDT) FRIDAY IN U.S. DISTRICT COURT.

THE TIMES PUBLISHED THREE ARTICLES, THE POST TWO AND THE GLOBE ONE, ALL BELIEVED BASED ON THE SAME REPORT -- A 7,000-PAGE PENTAGON STUDY OF U.S. INVOLVEMENT IN INDOCHINA FROM THE TRUMAN THROUGH JOHNSON ADMINISTRATIONS.

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BUT THE SUN-TIMES STORY IN TODAY'S EDITIONS DEALT WITH A NEW DOCUMENT -- A STATE DEPARTMENT REPORT DATED AUG. 30, 1963 -- AND WITH A NEW TIME PERIOD, THE YEARS DURING THE KENNEDY ADMINISTRATION. THE OTHER NEWSPAPERS COVERED THE JOHNSON YEARS.

THERE WAS NO IMMEDIATE COMMENT FROM THE JUSTICE DEPARTMENT ON WHETHER IT WOULD TAKE LEGAL ACTION AGAINST THE SUN-TIMES.

THE SUN-TIMES COPYRIGHTED STORY QUOTED THE REPORT AS SAYING SECRETARY OF STATE DEAN RUSK KNEW ABOUT AND WAS ENCOURAGED TO ASSIST IN A 1963 COUP WHICH TOPPLED SOUTH VIETNAM'S PRESIDENT NGO DINH DIEM TWO MONTHS BEFORE IT HAPPENED.

THE WHITE HOUSE ANNOUNCED TUESDAY IT WAS SPEEDING DECLASSIFICATION OF THE PENTAGON'S REPORT AND PRESIDENT NIXON IN JANUARY HAD ORDERED A BROAD REVIEW OF CURRENT CLASSIFICATION PROCEDURES.

A SHORT TIME LATER, SOLICITOR GENERAL ERWIN N. GRISWOLD TOLD THE U.S. CIRCUIT COURT OF APPEALS HEARING THE POST CASE OF HIS OFFER TO APPOINT IMMEDIATELY "A TASK FORCE TO ATTEMPT EXHAUSTIVE DECLASSIFICATION OF THE (PENTAGON) DOCUMENTS." HE PROMISED IT WOULD BE FINISHED IN 45 DAYS.

GRISWOLD SAID THE GOVERNMENT THEN WOULD WITHDRAW ITS OBJECTIONS TO THE PRINTING OF PORTIONS OF THE STUDY NO LONGER CONSIDERED TOP SECRET.

HE SAID HE WAS ACTING WITH THE AGREEMENT OF SECRETARY OF STATE WILLIAM P. ROGERS, DEFENSE SECRETARY MELVIN R. LAIRD AND THE JOINT CHIEFS OF STAFF.

WILLIAM R. BLANDON, ATTORNEY FOR THE POST, REJECTED THE OFFER, SAYING "THIS IS GOVERNMENT BY HANDOUTS -- THE GOVERNMENT CAN THEN OFFER TO THE PRESS WHAT SERVES ITS INTERESTS."

U.S. ATTORNEY WHITNEY NORTH SEYMOUR, SAYING "WHAT THE GOVERNMENT HAS DONE IS A TERRIBLE UNPOPULAR THING, AND WE ARE BEING VILIFIED FROM ALL SIDES," OFFERED A SIMILAR PROPOSAL TO THE APPEALS COURT IN NEW YORK HEARING THE TIMES CASE.

IN OTHER DEVELOPMENTS:

--REP. PAUL M. MCCLOSKEY JR., 4-CALIF., WAS QUESTIONED BY TWO FBI AGENTS ABOUT DOCUMENTS HE RECEIVED FROM FORMER DEFENSE DEPARTMENT AIDE DANIEL ELLSBERG BUT SAID HE GAVE THEM NO INFORMATION NOT ALREADY PUBLISHED.

--A HOUSE SUBCOMMITTEE PREPARED TO BEGIN HEARINGS TODAY ON THE VIETNAM PAPERS SITUATION. MCCLOSKEY SAID HE TALKED TO ELLSBERG, THE MAN MENTIONED AS THE PERSON WHO POSSIBLY LEAKED THE PAPERS TO THE TIMES, AND THOUGHT ELLSBERG MIGHT AGREE TO APPEAR BEFORE THE SUBCOMMITTEE.

-- PRESIDENTIAL COMMUNICATIONS DIRECTOR HERBERT GOLDMAN SAID IN 1969 THE JOHNSON ADMINISTRATION HAD PRACTICED "COMPLETE CANDOR" WITH THE PUBLIC AND ITS RECORD OF DECLASSIFYING DOCUMENTS IS "THE BEST OF ANY GOVERNMENT" FOR MANY YEARS.

-- RANNEY CLARK, ATTORNEY GENERAL DURING THE JOHNSON ADMINISTRATION, SAID HE HAD READ NOTHING IN THE PUBLISHED DOCUMENTS THAT WOULD BE "PROPERLY CLASSIFIED" INFORMATION.

THE GOVERNMENT HAS ARGUED IN ITS CASES AGAINST THE NEWSPAPERS THAT PUBLICATION OF THE SECRET MATERIAL MIGHT DAMAGE NATIONAL SECURITY AND FOREIGN RELATIONS. THE NEWSPAPERS HAVE ARGUED THAT THE PUBLIC HAS A RIGHT TO KNOW WHAT IS IN THE REPORTS, CLAIMING THEY NO LONGER REPRESENT A BREACH IN SECURITY.

SEYMOUR, ARGUING THE GOVERNMENT'S CASE IN NEW YORK, SAID PUBLICATION OF THE REPORT MIGHT NOT ONLY PROVE HARMFUL IN VIETNAM BUT "ALSO TO THE DELICATE MIDDLE EAST SITUATION, THE WAR OF NERVES IN CENTRAL EUROPE AND ARMS REDUCTION NEGOTIATIONS."

BUT ALEXANDER M. BICKEL, A PROFESSOR AT YALE UNIVERSITY LAW SCHOOL AND A LAWYER FOR THE TIMES, SAID THE GOVERNMENT WAS ABLE TO LIST ONLY SIX DOCUMENTS IN 47-VOLUME REPORT THAT MIGHT DAMAGE NATIONAL SECURITY.

SEYMOUR CLAIMED THE TIMES HAD THREE ALTERNATIVES BEFORE PUBLISHING THE REPORT -- DISCUSSING THE SENSITIVITY OF THE DOCUMENTS WITH APPROPRIATE OFFICIALS, WHIPPING UP PUBLIC OPINION FOR DECLASSIFICATION ON ITS EDITORIAL PAGES OR APPLYING FOR DECLASSIFICATION UNDER THE FREEDOM OF INFORMATION ACT -- BUT DID NONE OF THESE.

IN WASHINGTON, THE GOVERNMENT ARGUED THE PENTAGON DOCUMENTS WERE THE GOVERNMENT'S PROPERTY AND THE POST HAD NO RIGHT TO THEM. CHIEF APPEALS JUDGE DAVID DRAZELON SAID, HOWEVER, HE SAW LITTLE SIMILARITY BETWEEN GOVERNMENT OWNERSHIP OF DOCUMENTS WHICH HAVE NEWS VALUE AND THE LITERARY PROPERTY OF AUTHORS.

THE GOVERNMENT GOT TEMPORARY RESTRAINING ORDERS AGAINST THE TIMES, POST AND GLOBE AFTER THE NEWSPAPERS REFUSED TO STOP PUBLICATION VOLUNTARILY. DISTRICT COURT JUDGES RULED THE TIMES AND POST HAD THE RIGHT TO PUBLISH THE DOCUMENTS, BUT THE APPEALS COURTS CONTINUED THE RESTRAINING ORDERS PENDING THEIR RULINGS.

THE GLOBE CASE STILL IS IN DISTRICT COURT. DISTRICT JUDGE ANTHONY JULIAN ISSUED THE TEMPORARY RESTRAINING ORDER TUESDAY AND ORDERED THE DOCUMENTS IMPOUNDED BY THE COURT.

"WE WILL HONOR THE COURT BAN ON PUBLISHING ADDITIONAL DOCUMENTS," SAID GLOBE EDITOR THOMAS WINSHIP. "WE DON'T LIKE THIS IMPOUNDING ORDER. WE ARE CONSULTING COUNSEL AND WILL HAVE SOMETHING TO SAY WEDNESDAY."

ASSISTANT U.S. ATTORNEY JAMES GABRIEL TOLD JULIAN CONTINUED PUBLICATION BY THE GLOBE "WOULD RESULT IN IRREPARABLE INJURY TO THE NATION'S DEFENSE AND TO THE COUNTRY'S JUDICIAL SYSTEM." WHEN ASKED BY THE JUDGE AS TO THE PRECISE HARM, GABRIEL GAVE NO SPECIFIC DETAILS.

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REC 16

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UPI-6

(VIET REPORTS)

WASHINGTON--THE SUPREME COURT MEETS TODAY, POSSIBLY TO HAND DOWN ITS DECISION IN THE HISTORIC VIETNAM PAPERS CASE -- A TEST OF WHETHER THE DOCUMENTS INVOLVED ARE HISTORY THAT NEWSPAPERS MAY PRINT OR SENSITIVE COMMUNICATIONS WITH THE POWER TO AFFECT LIVES AND SECURITY.

THE COURT HAD A REGULARLY SCHEDULED MEETING AT 10 A.M. EDT TO HAND DOWN OPINIONS IN A FINAL BATCH OF CASES, POSSIBLY INCLUDING THE NEW YORK TIMES-WASHINGTON POST CASE IT HEARD IN A RARE SATURDAY SESSION.

THE COURT HAD PLANNED TO RECESS FOR THE SUMMER AFTER TODAY'S SESSION, BUT OBSERVERS SAID IT WOULD NOT BE UNPRECEDENTED IF IT REMAINED IN TOWN FOR THE REST OF THE WEEK OR HOWEVER LONG IT TOOK TO DECIDE THE NEWSPAPER CASE.

IN OTHER DEVELOPMENTS:

--THE 11-MEMBER KNIGHT NEWSPAPER GROUP SUNDAY PUBLISHED ANOTHER SERIES OF ARTICLES BASED ON THE SECRET DOCUMENTS, THE LEAD DISPATCH REPORTING THAT GEN. EARLE G. WHEELER ONCE ADVISED PRESIDENT JOHNSON THAT THE U.S. MIGHT "WISH" TO INVADE NORTH VIETNAM. A SECOND STORY REPORTED THAT FORMER SECRETARY OF STATE DEAN RUSK PLEADED WITH THE JOHNSON ADMINISTRATION NOT TO BOMB HANOI IN 1966 WHILE PEACE TALKS WERE BEING PLANNED.

--THE U.S. DISTRICT COURT IN ST. LOUIS SET A JULY 5 HEARING DATE TO DECIDE WHETHER THE POST-DISPATCH SHOULD BE STOPPED FROM PRINTING ANYTHING MORE BASED ON THE SECRET REPORT.

--GEORGE W. BALL, UNDERSECRETARY OF STATE DURING THE KENNEDY AND JOHNSON ADMINISTRATIONS, SAID ON CBS' FACE THE NATION THAT DISCLOSURE OF THE DOCUMENTS WAS "HEALTHY IN A WAY" AND ADDED THAT HE FELT THERE WAS "VERY LITTLE DANGER" TO THE NATIONAL SECURITY.

A SUBURBAN BALTIMORE BIWEEKLY NEWSPAPER AND THE CHICAGO SUN-TIMES SAID SUNDAY THEY RECEIVED COPIES OF DECLASSIFIED STATE DEPARTMENT DOCUMENTS FROM THE SAME ANTIWAR GROUP. THE MARYLAND GAZETTE SAID IT RECEIVED THE DOCUMENTS FROM ROBERT B. JOHNSON JR., A WEST POINT GRADUATE WHO SAID HE BECAME DISILLUSIONED WITH THE ARMY AFTER SERVING IN VIETNAM, AND RESIGNED IN 1965. JOHNSON, WHO IS NATIONAL COORDINATOR OF THE CITIZENS' COMMISSION OF INQUIRY INTO U.S. WAR CRIMES IN VIETNAM, SAID HE GAVE COPIES OF THE SAME DOCUMENTS TO THE SUN-TIMES. BUT HE WOULD NOT SAY WHERE HE GOT THEM.

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GEN. MAXWELL D. TAYLOR SAYS HE WARNED IN 1961 THAT THE U.S. MIGHT
BECOME ENSNARED IN VIETNAM WITH THE INTRODUCTION OF TROOPS, BUT THAT
PRESIDENT KENNEDY HAD "DEEP FEELINGS" ABOUT PREVENTING A COMMUNIST
TAKEOVER. TAYLOR, KENNEDY'S PERSONAL MILITARY ADVISER, WAS INTERVIEWED
SUNDAY BY THE PUBLIC BROADCASTING SERVICE.

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UPI-109

(VIET REPORTS)

WASHINGTON--THE DEFENSE DEPARTMENT DELIVERED ITS TOP SECRET HISTORY OF THE ORIGINS OF THE VIETNAM WAR TO THE SENATE TODAY, WITH A WARNING THAT DISCLOSURE OF INFORMATION IN THEM WOULD POSE "GRAVE AND IMMEDIATE DANGERS TO THE NATIONAL SECURITY."

MAJ. ELBERT MARSHAL AND SGT. ROBERT D. FAY TRUNDLED THE TWO CARTONS OF DOCUMENTS, 47 VOLUMES IN ALL, TO THE CAPITOL OFFICE OF SEN. ALLEN J. ELLENDER, D-ALA., PRESIDENT OF THE SENATE AT 12:10 P.M., FIVE MINUTES AHEAD OF SCHEDULED.

ELLENDER SIGNED A RECEIPT FOR THE HISTORY, AND THEN TURNED THE BOXES OVER TO SENS. MIKE MANSFIELD, D-MONT., AND HUGH SCOTT, R-PA., THE MAJORITY AND MINORITY LEADERS.

FAY SLASHED OPEN ONE OF THE BOXES AND ELLENDER WITHDREW TWO OF THE VOLUMES--31 32--AND HELD THEM UP FOR THE BENEFIT OF PRESS PHOTOGRAPHERS. A WHITE COVER SHEET OVER THE BLUE-BOUND VOLUMES WAS STAMPED "TOP SECRET" IN BLOCK RED LETTERS.

SCOTT OPENED ONE OF THE VOLUMES, THUMBED THROUGH IT, DISPLAYING TYPEWRITTEN WHITE PAPER PAGES.

AFTER SIGNING THE RECEIPT, ELLENDER RETURNED IT TO RADY JOHNSON, DEFENSE SECRETARY LAIRD'S LEGISLATIVE AIDE.

"WITH 100 SENATORS READING THOSE DOCUMENTS, DO YOU THINK THEY WILL REMAIN SECRET?" A REPORTER ASKED ELLENDER.

"IF I'M TO JUDGE FROM PAST EXPERIENCE AROUND HERE," ELLENDER REPLIED, "THE ANSWER IS NO."

ELLENDER THEN READ PARTS OF A LETTER OF TRANSMITTAL FROM LAIRD CONCERNING THE PAPERS. HE EMPHASIZED THAT LAIRD SAID IN THE LETTER THAT DISCLOSURE WOULD LEAD TO "GRAVE AND IMMEDIATE DANGERS TO THE NATIONAL SECURITY."

ELLENDER ADDED, HOWEVER, THAT THE PENTAGON ALSO HAD INFORMED HIM IT WILL MOVE TO DECLASSIFY ALL BUT THE MOST SECRET AND SENSITIVE PARTS OF THE DOCUMENTS SOON.

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THE DOCUMENTS WERE CONTAINED IN TWO BROWN CORRUGATED BOXES WRAPPED IN PLAIN BROWN PAPER. WHITE SHEETS OF PAPER HAD BEEN PASTED ON EACH BOX, READING "TOP SECRET, VOLUMES 1-30," AND "TOP SECRET--VOLUMES 31-47."

MARSHAL AND FAY, ACCOMPANIED BY JOHNSON, WHEELED THE DOCUMENTS FROM ELLENDER'S OFFICE TO THE OFFICE OF ^{DC} FRANK VALEO, SECRETARY OF THE SENATE. THEY WERE PLACED IN A LOCKED VAULT, WHERE THEY WILL REMAIN UNTIL THE SENATE ITSELF DETERMINES WHETHER TO REFER THEM TO THE FOREIGN RELATIONS OR THE ARMED SERVICES COMMITTEE, OR TO BOTH COMMITTEES.

WHILE IN THE SECRETARY'S OFFICE, SENATORS WILL BE ABLE TO READ THE DOCUMENTS, BUT WILL NOT BE PERMITTED TO TAKE NOTES.

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ADD 1 VIET REPORTS, WASHINGTON (UPI-109)
 MEANWHILE, REP. BELLA S. ABZUG, D-N.Y., COMPLAINED TO THE HOUSE ARMED SERVICES COMMITTEE THAT THE PURPOSE OF HER RESOLUTION REQUIRING THAT THE PENTAGON DOCUMENTS BE GIVEN TO THE CONGRESS WAS BEING "THWARTED BY THE METHOD OF TRANSMITTAL."

SHE SAID THAT SINCE THERE WILL BE ONLY ONE COPY FOR THE 435 HOUSE MEMBERS AND NO STAFF OF THE MEMBERS CAN READ THE DOCUMENTS "THE 92ND CONGRESS WILL HAVE PASSED INTO HISTORY BEFORE A FIRST-TERM CONGRESSWOMAN FROM NEW YORK GETS A CHANCE TO READ IT."

IN ADDITION, MEMBERS CANNOT TAKE NOTES ON THE MASSIVE DOCUMENTS AND THEY MUST HAVE AN "ELEPHANTINE MEMORY" TO RETAIN ALL THE FACTS CONTAINED IN THE PAPERS SHE SAID.

MRS. ABZUG ARGUED THAT EXCEPT FOR NAMES WHICH MIGHT APPEAR IN THE DOCUMENTS ALL OF IT SHOULD BE MADE PUBLIC. SHE SAID THAT IF PUBLIC KNOWLEDGE OF AN INDIVIDUAL'S IDENTITY WOULD POSSIBLY LEAD TO PHYSICAL HARM HIS NAME COULD BE DELETED BY A JOINT CONGRESSIONAL COMMITTEE.

REP. BOB ECKHARDT, D-TEX., WON THE SUPPORT OF AT LEAST ONE COMMITTEE MEMBER FOR HIS POSITION THAT THE DOCUMENTS COULD BE RELEASED TO THE PUBLIC EXCEPT FOR THE MATERIAL IDENTIFIED IN A CLASSIFIED REPORT TO THE SUPREME COURT ON JUNE 21 BY THE U.S. SOLICITOR GENERAL.

REP. LES ASPIN, D-VIS., SAID AFTER THE HEARING WAS RECESSED THAT HE WOULD ATTEMPT TO AMEND THE ABZUG RESOLUTION WITH ECKHARDT'S IDENTIFICATION OF WHAT HE SAID THE GOVERNMENT BELIEVES MUST REMAIN CLASSIFIED.

SOME 25 HOUSE MEMBERS HAVE CO-SPONSORED THE RARELY USED RESOLUTION OF INQUIRY SPONSORED BY MRS. ABZUG. SHE HAS INTRODUCED OTHER RESOLUTIONS REQUIRING RELEASE OF OTHER DOCUMENTS RELATING TO VIETNAM INCLUDING THE ADMINISTRATION'S PLANS FOR A RESIDUAL FORCE.

ALSO IN THE HOUSE, SEVEN MEMBERS OF THE GOVERNMENT OPERATIONS COMMITTEE TOOK ADVANTAGE OF A RARELY USED LAW TO SEEK A COPY OF THE PENTAGON PAPERS -- PLUS A SECOND DOCUMENT -- FOR THE USE OF THEIR PANEL.

THE CONGRESSMEN DRAFTED A LETTER TO LAIRD ASKING THAT HE FURNISH THE MATERIALS BY 5 P.M. WEDNESDAY. THEY ASSURED HIM THAT THE SECURITY OF THE PAPERS WOULD BE RESPECTED AND THAT ONLY MEMBERS OF THE COMMITTEE, PLUS STAFF AIDES WITH TOP SECRET CLEARANCE, WOULD BE PERMITTED TO READ THEM.

THE SECOND DOCUMENT REQUESTED IS ENTITLED "COMMAND AND CONTROL STUDY OF THE GULF OF TONKIN" AND DEALS WITH THE DECISIONS SURROUNDING THE 1964 INCIDENT IN WHICH THE NORTH VIETNAMESE STAGED AN ALLEGEDLY UNPROVOKED ATTACK ON A U.S. DESTROYER, A MOVE WHICH PROMPTED AMERICAN RETALIATION.

SIGNING THE LETTERS WERE REPS. WILLIAM MOORHEAD, D-PA., JOHN MOSS, D-CALIF., OGDEN REID, R-N.Y., PAUL MCCLOSKEY, R-CALIF., BILL ALEXANDER, D-ARK., JOHN CONYERS, D-MICH., AND HENRY REUSS, D-WIS.

ALL BUT REUSS ARE MEMBERS OF THE COMMITTEE'S FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE, WHICH HAS BEEN HOLDING HEARINGS ON GOVERNMENT SECURITY CLASSIFICATION PRACTICES.

THE LAW INVOKED BY THE REPRESENTATIVES STATES THAT UPON REQUEST OF SEVEN MEMBERS OF THE COMMITTEE AN EXECUTIVE AGENCY "SHALL SUBMIT ANY INFORMATION REQUESTED OF IT RELATING TO ANY MATTER WITHIN THE JURISDICTION OF THE COMMITTEE."

THEIR ACTION REFLECTS THE UNHAPPINESS OF MANY ANTIWAR AND OTHER CONGRESSMEN WITH THE PROCEDURES UNDER WHICH THE PENTAGON STUD PROVIDED BY THE ADMINISTRATION WAS SENT ONLY TO THE ARMED SERVICES COMMITTEE. THEY CONTEND THEY CANNOT MAKE EFFECTIVE USE OF THEM THERE.

..6/28--E/GE126P



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, JUNE 28, 1971

Mr. Tolson _____
Mr. Sullivan ☒ _____
Mr. Mohr _____
Mr. Bishop _____
Mr. Brennan, C.D. _____
Mr. Callahan _____
Mr. Casper _____
Mr. Conrad _____
Mr. Dalbey _____
Mr. Felt _____
Mr. Gale _____
Mr. Rosen _____
Mr. Tavel _____
Mr. Walters _____
Mr. Soyars _____
Mr. Beaver _____
Tele. Room _____
Miss Holmes _____
Miss Gandy _____

A federal grand jury today indicted Daniel E. Ellsberg on charges of illegal possession of top secret government documents and failing to return them to the government as well as converting the documents to his own use.

Attorney General John N. Mitchell announced the two-count indictment was returned in U.S. District Court in Los Angeles.

The first count of the indictment said that between September, 1969, and October, 1969, Ellsberg illegally possessed xeroxed copies of separately bound sets of 47 volumes and 18 volumes respectively of a study entitled "United States-Vietnam Relations, 1945-1967" consisting of descriptive text, cablegrams, memoranda, decision papers and other internal Executive Branch documents.

It said that all but one of these documents were classified "Top Secret" and the remaining one was classified "Confidential."

The indictment alleged that Ellsberg "did willfully, knowingly and unlawfully retain the same and fail to deliver them to the officer or employee of the United States entitled to receive them."

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 Tele. Room ☒
 Holmes ☒
 Gandy ☒

243A

PAPERS WITH COURT

NEW YORK (UPI)--MEMBERS OF THE "ANTIWAR ACTIVIST LEFT" MAY HAVE BEEN INVOLVED IN DELIVERING COPIES OF THE SECRET PENTAGON STUDY ON THE VIETNAM WAR TO SELECTED NEWSPAPERS, TIME MAGAZINE SUGGESTED SUNDAY.

IN AN ARTICLE IN THE CURRENT ISSUE, TIME SAID IT "APPEARS LIKELY" THAT "POSSIBLY THE SAME SKILLFUL UNDERGROUND OPERATORS THAT FEE FBI RECORDS STOLEN FROM MEDIA, PA., TO SELECTED NEWSPAPERS" MAY HAVE BEEN INVOLVED IN DISTRIBUTING COPIES OF THE PENTAGON PAPERS.

TIME SAID THE PAPERS PUBLISHING THE REPORT "MET THE SAME OBVIOUS CRITERIA" A STRONG ANTIWAR EDITORIAL RECORD."

PORTIONS OF THE REPORTS WERE PUBLISHED BY THE NEW YORK TIMES, THE WASHINGTON POST, THE BOSTON GLOBE, THE LOS ANGELES TIMES, THE KNIGHT NEWSPAPERS, THE ST. LOUIS POST-DISPATCH AND THE CHICAGO SUN-TIMES.

CALLING THE "ORCHESTRATION" OF DELIVERY "HIGHLY SOPHISTICATED," TIME SAID THAT IN THE CASE OF THE KNIGHT PAPERS, A TOP EDITOR OF THAT CHAIN "RECEIVED A CALL FROM A MAN WHO ADMITTED HE WAS USING A PSEUDONYM."

"WAS THE KNIGHT CHAIN INTERESTED IN THE PAPERS? THEN IT WOULD HAVE TO AGREE THAT IT WOULD PROTECT THEM AGAINST GOVERNMENT SEIZURE," THE TIME ARTICLE STATED.

"THE EDITOR CONSENTED AND TOLD HIS WASHINGTON BUREAU CHIEF, ROBERT BOYD, TO EXPECT A LONG-DISTANCE CALL. THE STRANGER TELEPHONED BOYD SEVERAL TIMES, EACH TIME OFFERING A HINT AS TO WHERE THE SECRET DOCUMENTS MIGHT BE FOUND.

"BOYD FINALLY WAS LED TO A POINT OUTSIDE WASHINGTON...THERE HE FOUND SOME 1,000 PAGES OF THE PENTAGON REPORT," THE ARTICLE SAID.

TIME SAID THE KNIGHT PACKAGE CONSISTED OF "AN ORDERLY PRESENTATION WITH OCCASIONAL MARGINAL NOTES LIKE 'WOW!' INKED BESIDE SOME PENTAGON STATEMENTS."

TIME SAID THE PICKUP INSTRUCTIONS OF THE BOSTON GLOBE WERE SO MISCELLANEOUS THAT EDITORS SUSPECTED A HOAX. **65-74060-A**
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 ALONG AND RECEIVED A BAG CONTAINING 2,000 PAGES.

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UPI-78

(VIET REPORTS)

DETROIT--NEWSPAPERS WHICH HAVE PUBLISHED PORTIONS OF A SECRET PENTAGON STUDY ON THE ORIGINS OF THE VIETNAM WAR HAVE BEEN USED BY THE PEACE MOVEMENT TO GET OVER A PROPAGANDA POINT, THE DETROIT NEWS SAID IN A FRONT-PAGE EDITORIAL IN ITS SUNDAY EDITIONS.

THE NEWSPAPER, IN A LENGTHY EDITORIAL, SAID IT COULD NOT AGREE "WITH THOSE OF OUR PRESS COLLEAGUES CONTENDING THAT NATIONAL INTEREST -- AND THE CAUSE OF A FREE PRESS -- ARE SERVED BY THE CURRENT BATTLE OVER PUBLICATION OF SECRET PENTAGON PAPERS."

"WE DO NOT BELIEVE THE NEW YORK TIMES AND OTHER INVOLVED NEWSPAPERS ACTED RESPONSIBLY AND IN THE PUBLIC INTEREST WHEN -- WITHOUT EVEN TRYING TO USE ESTABLISHED PROCEDURES FOR DECLASSIFICATION OF SECRET PAPERS -- THEY CHOSE TO PUBLISH AN EDITED VERSION OF WHAT IT NOW APPEARS WAS AN INCOMPLETE ACCOUNT OF OUR INVOLVEMENT IN THE VIETNAM WAR," THE EDITORIAL SAID.

"MANIFESTLY THE NEWSPAPERS WERE USED BY THE PEACE MOVEMENT TO GET OVER A PROPAGANDA POINT," THE NEWS EDITORIAL SAID. "OBVIOUSLY, THERE IS REASON TO WONDER IF THEY WOULD HAVE RESPONDED WITH SUCH ALACRITY TO AN EFFORT TO PUBLICIZE DOCUMENTATION SUPPORTING AN OPPOSITE VIEW OF THE VIETNAM PROBLEM."

THE NEWS HAS NOT PUBLISHED ANY ACCOUNT TAKEN DIRECTLY FROM THE PENTAGON STUDY BUT HAS PUBLISHED ACCOUNTS FROM OTHER NEWSPAPERS.

6-27--TS439PED

ELLSBERG INTENDS TO GIVE UP TO U.S.

Attorneys Say Researcher
Sought by the F.B.I. Will
Appear Tomorrow

By ROBERT M. SMITH
Special to The New York Times

BOSTON, June 26—Two lawyers representing Dr. Daniel Ellsberg said today that he would give himself up here to the Federal Government Monday morning.

The Justice Department announced early this morning that a warrant had been issued for the arrest of Dr. Ellsberg on charges that he had "unauthorized possession of top-secret documents and failed to return them."

Dr. Ellsberg, a 40-year-old senior research associate at the Massachusetts Institute of Technology, has been reported to be the source of the Pentagon study that The New York Times drew upon for its series on Vietnam. The Times has declined to discuss the source of its materials.

The lawyers, Charles R. Nesson, a professor at the Harvard Law School, and Leonard B. Boudin, a visiting professor at the school, would not disclose where Dr. Ellsberg was or whether they had been in touch with him.

Speaking at a news conference, the lawyers said they had asked the Federal Bureau of Investigation not to look for Dr. Ellsberg over the weekend.

Asked whether the F.B.I. would honor the request, Ralph Rampton, assistant agent in charge of the bureau's Boston office, said: "A warrant is outstanding for the arrest of Dr. Daniel Ellsberg and we have our duty to execute the warrant."

The lawyers said they were seeking "circumstances of decorum and convenience" in which Dr. Ellsberg might turn himself in. They wanted to avoid the press coverage and folderol of a dramatic arrest.

Warrant Issued on Case

The warrant was issued in Los Angeles, where a Federal grand jury has been looking into the leak of the Pentagon papers. Mr. Boudin and Mr. Nesson said that they had not yet seen the court papers. "We don't know what crime is al-

leged," Mr. Boudin said, "The Government won't show us the affidavits, complaints, warrants." Mr. Nesson said that the F. B. I. had "declined to do more than read the warrant to us."

The lawyer said that Dr. Ellsberg would turn himself in 10 A.M. Monday at the United States Attorney's office in the Post Office Building in Boston. Mr. Boudin gave three reasons why he thought "a regular working day would be appropriate": the immediate availability of a magistrate, the availability of a Federal judge and the necessity of raising bail if required.

Mr. Boudin said, "If the Government would agree that if Ellsberg appeared today, he could be released in his own recognizance, like Dr. Spock was several years ago in this same district, there would be no difficulty in having him appear today."

"If any of you are ready to contribute to a bail fund," Mr. Boudin said, "maybe we'll produce him today."

"If there is any reason why the Government is precipitate," he added, "why should we be precipitate?"

The lawyer pointed to what he termed the "unusual" issuance of the arrest warrant "at midnight and 11 hours before the Supreme Court hears the Times case."

"I don't think the Supreme Court is capable of being influenced," Mr. Boudin added, "but I think the Administration is capable of thinking the court be influenced."

He said that a ruling by the Supreme Court favorable to The New York Times "might very well dispose of many of the issues presented in our case," since a major consideration is "whether or not the documents are national defense documents."

REC-6

Asked whether they believe or Dr. Ellsberg believes that he had committed a crime, Mr. Boudin, said, "I think the answer is unequivocally no."

The lawyers decline to talk about the facts of the case. Asked about the law, they would only say that they had not yet been allowed to inspect the court papers.

Mr. Boudin summed up their position this way: "What we are saying is that even if everything charged against Mr. Ellsberg is true, there has been no crime committed."

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The Sunday Star (Washington) _____
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The New York Times _____
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The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

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Ellsberg to Surrender Monday

Client Innocent, Lawyer Says in Announcement

By JAMES F. DONOHUE
 Associated Press Writer

BOSTON —An attorney for Dr. Daniel Ellsberg, describing his client as unequivocally innocent of any crime in connection with the Pentagon documents on American involvement in Vietnam, announced yesterday that Ellsberg would surrender at 10 a.m. tomorrow to the U.S. attorney in Boston.

Ellsberg, 40, a former Pentagon researcher and now a research associate at Massachusetts Institute of Technology, was sought on a federal warrant charging unauthorized possession of top-secret documents and failure to return them.

The warrants were issued at midnight Friday in Los Angeles.

Leonard B. Boudin, one of Ellsberg's attorneys, said at a news conference he had told FBI agents of the decision to surrender Monday and asked that they "refrain from their efforts to apprehend him."

No FBI Response

"They said they would respond but have not done so, so far," Boudin said.

"If the government would agree that if Dr. Ellsberg appeared today that he could be released in his own recognition, then we would have no difficulty in having Dr. Ellsberg appear today," Boudin said.

Boudin said he talked to FBI agents Thursday and said Ellsberg would come out of hiding "if we could avoid the press coverage and all the folderol."

"We have not heard from those agents since," Boudin said.

Several hours later, a second attorney, Charles R. Nesson, told reporters that since there was no response from the FBI on the offer to have Ellsberg appear quietly, his client would surrender as scheduled tomorrow.

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 The National Observer _____
 People's World _____

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Lawyer Suspicious

Nesson said the lack of response "indicates to me — I suspect at any rate — that the government, the FBI, is more

interested in making a highly publicized arrest than they are in simply having Ellsberg come forward."

Meanwhile Ralph J. Rampton, assistant agent in charge of the Boston FBI office, said, "There is a fugitive warrant out for Ellsberg and I can only say that as long as he is a fugitive we will be looking for him."

Asked if Ellsberg, charged with possessing secret Pentagon documents pertaining to U.S. involvement in Vietnam, is guilty of a crime, Boudin said: "Unequivocally no."

Asked if he meant that taking secret Pentagon papers is no crime or only that Dr. Ellsberg has committed no crime, Boudin said, "I suspect we mean both. But our representation of Dr. Ellsberg would

~~only go as far as to say that he~~ has committed no crime."

Articles said to have been based on the secret Pentagon study have been published, then barred by the courts, in the Washington Post, the New York Times, the Boston Globe and the St. Louis Post-Dispatch.

Nesson read a statement at the beginning of the news conference in which he declined comment on the charges against Ellsberg "because we have not seen them."

Nesson questioned the "unusual circumstances" of the warrant for Ellsberg's arrest, noting it was issued at midnight, "an unusual working hour for magistrates, as I remember magistrates."

"This was 11 hours before the United States Supreme Court was to rule" on the publication of the articles based on the Pentagon papers in The Times and The Post.

Nesson said he was "a little suspicious" that there was "some attempt by the government to create an atmosphere unfavorable to the newspapers" by issuing the warrants.

"I do not think the court can be influenced this way," Nesson said, "but I think there are people in the Nixon administration who are capable of thinking this would occur."

He said he thought the questions to be settled by the Supreme Court "may very well dispose of many of the issues in our case."

The U.S. Supreme Court held a hearing on the newspapers' case yesterday but recessed with no indication when a decision might come. The court is scheduled to meet again at 10 a.m. tomorrow, the same hour Ellsberg is scheduled to surrender.

Nesson said there is a "legal relationship" between the Ellsberg's case and the newspaper case before the Supreme Court, "not necessarily a factual one."

Boudin said there were three reasons why the decision was made to surrender Ellsberg tomorrow: "The availability of a federal judge and the possible need to raise bail."

"We want to do this on a regular working day," Boudin said. "Is there any reason why, if the government is precipitous, that we have to be precipitous?"

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Ellsberg: From Pentagon Adviser to Outspoken Critic of the War

By PAUL L. MONTGOMERY

Of the figures who have emerged from the renewed public controversy over American decision-making in Vietnam, probably none has gone through more intense changes than Dr. Daniel Ellsberg, the once hawkish analyst for the Rand Corporation, who became a committed opponent of the war he helped to shape.

In a progression of developments in his life, the 40-year-old intellectual has gone from Harvard prodigy to Marine officer thirsting for combat, from cold-minded analyst of nuclear war to weary observer of pacification in South Vietnam's provinces, from respected Pentagon adviser to outspoken participant in the antiwar cause.

Early yesterday morning, a new stage was begun when the Justice Department obtained a warrant for his arrest. Dr. Ellsberg is charged with "unauthorized possession" of top-secret documents.

Was One of 36 Authors

Dr. Ellsberg, one of about 36 authors involved in the Pentagon study of the Vietnam war, dropped from public view soon after The Times series began. He has declined to discuss the question of the dissemination of the study, and The Times has refused to talk about the source of its articles. The Federal warrant does not charge the scholar with passing documents, but with possession and failure to return them.

The massive study has loomed large in Dr. Ellsberg's thinking since the completion of his conversion about 18 months ago. In the only interview he has granted since he and his wife disappeared from their Cambridge, Mass., apartment, Dr. Ellsberg said in a C.B.S. Television News program that

working on the document in 1968 and reading it over had had a part in changing his mind about the war.

In talking about Dr. Ellsberg, friends and colleagues mention his brilliance, his intensity, his articulateness, his independence of mind. "His mind is relentless," said one. "He will pursue a line of thought way beyond where others will, to the point where it hurts."

Look for 'Some Key to Dan'

Because his intellect has always been wedded to action, Dr. Ellsberg's friends do not find the progression of his views to the present controversy surprising. "People keep looking for some key to Dan," said another colleague. "Why can't the story be a fine mind finding out the truth, and acting on it."

Daniel Ellsberg was born in Chicago on April 7, 1931. His father, now a retired structural engineer, moved with the Depression and in 1937 settled in Detroit, where Daniel grew up. His father recalls that at five the boy could recite the Gettysburg Address, and that he acquired his mother's love for music.

The boy went to Barber Elementary School in Highland Park, a Detroit suburb, and in 1943 got a scholarship for Cranbrook, an exclusive preparatory school in Bloomfield Hills. On graduation he was first in a class of 61 with an average of 95.75. "Obviously, he is brilliant," said a school official, reviewing his record. He was also captain of the basketball team and a popular student.

Scholarship to Harvard

At Harvard, which he also attended on scholarship, he was president of The Advocate, the literary magazine, and a member of the editorial board of The Crimson, the college newspaper. He also took up mountain-climbing. He re-

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earned his B.A. in economics in 1952 and was third in a class of 1,147.

Early in his college career, he had met Carol Cummings, a Radcliffe girl whose father was a retired Marine Corps brigadier general. They were engaged when he was a junior and married after graduation.

He spent a year studying at Cambridge in England, then returned to Harvard to take his doctoral examinations. By this time, however, his mind was on the Marine Corps.

Overcoming a medical deferment for a trick knee, he enlisted in April, 1954 and emerged from officers' candidate school a second lieutenant and platoon leader at Quantico and later Camp Lejeune. In 1956, with the Suez crisis looming, he extended his tour a year "on grounds that it was likely to be in combat," he said later. He was discharged as a first lieutenant in February, 1957.

Joined Rand in 1959

The next two and a half years were spent back at Harvard as a member of the Society of Fellows, the most sought-after distinction for a young scholar. He expanded his interest in economics to

include political science and the branch of psychology known as decision theory. His Ph.D. dissertation was in games theory, then coming into use as an instrument in military planning.

In June, 1959, he joined the Rand Corporation in Santa Monica, the center for the application of games theory — basically the analysis of competing strategies by attempting to quantify the costs and risks attendant upon the various outcomes — to military matters. He worked on problems of general nuclear war and later, in Washington, on such matters as the Cuban missile crisis.

In August, 1964, he joined the top-level staff of the Assistant Secretary of Defense for International Security Affairs, working an decision-making in Vietnam. In July, 1965, he volunteered to go to Vietnam in the State Department, and found a place in the Saigon staff of Maj. Gen. Edward G. Lansdale, then in charge of the American pacification effort.

Dr. Ellsberg's job was to assess American and Vietnamese efforts against guerrillas in the provinces. Those who knew him remember that early in his tour he approached his job with some-thing like Boy Scout enthusiasm, glorying in combat and weapons.

Posing for Pictures

Peter Arnett, the Associated Press correspondent, remembers seeing him in the Mekong Delta attempting to lead an unenthusiastic American platoon against Vietcong snipers. Dr. Ellsberg posed for a picture with a Schmeisser submachine pistol and later pestered him for copies, the correspondent says.

In 1966, friends say, he began to express skepticism about the success of American efforts, although he did not yet question their ad-

visibility. General Lansdale does not remember any talk about the morality of the war. "We really didn't get into that type of discussion," he says. "There was too much to do every day with immediate problems."

General Lansdale remembers Dr. Ellsberg often playing and talking with Vietnamese children on his trips into the field. "He seemed to have a very strong feeling for the children, for his own and for all the others," the general said.

By the time he went to Vietnam, Dr. Ellsberg had become separated from his wife. However, he has always kept in close touch with his two children, now teen-agers, who live with their mother in California. His former wife provided one of the affidavits on which yesterday's warrant was based.

Visitor in Vietnam

One of Dr. Ellsberg's visitors in Vietnam was Patricia Marx, the daughter of Louis Marx, the toy manufacturer. Friends remember that their views on the war — Miss Marx was a dove, Dr. Ellsberg still a hawk — impeded their romance.

By 1967, friends say, Dr. Ellsberg began to feel that no change in tactics or reallocation of American resources could turn the tide of the war. He prepared a report stating that progress in pacification had been nil and made a special trip to bring it to the attention of Secretary of Defense Robert S. McNamara.

After a bout with hepatitis, Dr. Ellsberg left Vietnam and in July, 1967, left the Government to rejoin the Rand Corporation. However, until the spring of 1969 he was still actively involved in Vietnam planning as a consultant. One of his last tasks was to prepare an outline of

alternate Vietnam strategies for a presentation that Henry Kissinger, President Nixon's Special Assistant for National Security Affairs, made to the National Security Council.

It was during his second tour at Rand that Dr. Ellsberg completed the alteration of his views on the war. Friends attribute it to the influence of Miss Marx, who he married last year, to helping prepare the Pentagon study in 1968 and to the case of Tran Ngoc Chau in Vietnam.

Mr. Chau, who was close to Dr. Ellsberg while he was in Vietnam, was head of cadre operations for the Ministry of Rural Development and later a national deputy. In 1970 he was sentenced to 10 years in prison for allegedly having maintained contact with his brother, a Vietcon agent. The Supreme Court annulled the sentence but President Nguyen Van Thieu has refused to release Mr. Chau.

Speaking to the Public

By 1970, Dr. Ellsberg was talking about the moral issues of the war and left Rand, so that, he said, he could "speak to the public" about his views.

Dr. Ellsberg presently is a senior research associate at the Center for International Studies at the Massachusetts Institute of Technology in Cambridge. In the last year he has appeared frequently at peace rallies, written against the war and appeared in behalf of draft resisters.

The scholar has often expressed the opinion that President Nixon has no intention of withdrawing all American troops from Vietnam and that increased public activity is necessary to force unilateral withdrawal. In January, talking about that prospect, Dr. Ellsberg said:

"So then you fall back and say, what do you do about that? And they answer, nothing. I am not content to go with that."



CBS NEWS

Daniel Ellsberg

PAPER ON COAST ESCAPES ACTION

U.S. Also Says It Won't Act
Now Against Knight Chain

By LINDA CHARLTON

The Justice Department announced yesterday that it would not take legal action "at this time" against The Los Angeles Times and the 11-newspaper Knight chain, which yesterday published articles said to be based on secret Government documents.

The New York Times, The Washington Post and The Boston Globe remained under court orders not to publish any further articles drawn from the Pentagon study on the origins of the Vietnam war.

John C. Hushen, a spokesman for the Justice Department, said in Washington late yesterday that the department had reviewed the articles that appeared in The Los Angeles Times and at least seven of the Knight papers and had decided that "they do not constitute any threat to national security."

Opinion Unchanged

He added that "we find no reason to change our opinion" about the nature of the material appearing in The Chicago Sun-Times, which on Wednesday began publishing articles reportedly based on secret Government documents. The department had said, after reviewing the first articles, that the documents had been declassified. That judgment, according to Mr. Hushen, was unchanged by the articles in yes-

terday's issues of The Sun-Times.

Mr. Hushen was asked what action the Justice Department would take if further articles in the Los Angeles and Chicago papers and those of the Knight chain should be felt to present a "threat to national security."

"We'll cross that bridge when we come to it," he said. Lee Hills, the executive editor of the Knight Newspaper Group, said that the chain had "no plan at this moment to publish further material from the Pentagon papers." A spokesman for the group said that, unlike the three papers enjoined from further publication, no one from the Justice Department had even requested that the material not be published.

Two More Articles

The Sun-Times, however, published two articles in its Friday issue, which was on the newsstands late yesterday afternoon, that were reportedly based on a number of sources, including the Pentagon, the State Department and the Central Intelligence Agency.

James F. Hoge, editor of The Sun-Times, said that some of the source documents were classified and some were not.

The latest articles in The Sun-Times with events during the Eisenhower Administration. Those in the Knight newspapers focused on Robert S. McNamara, the Secretary of Defense, and the progress of the war in 1967 and early 1968. In both cases, the articles came from the Washington bureaus of the newspapers.

The Knight papers referred only to information "made available to Knight newspapers." Derick Daniels, a senior Knight editor in Detroit,

who supervised the project, refused to discuss the articles, the amount of material received or its source.

The Sun-Times said initially that its material had come from the Commission of Inquiry into U.S. War Crimes in Vietnam. When asked how long the articles would continue, Thomas P. Ross, the Chicago paper's Washington bureau chief, said: "We're open-ended."

Articles Widely Published

A random check of several major newspapers across the country indicated that, so far as was possible, they were publishing as much as was available about the so-called Pentagon papers. The St. Louis Post-Dispatch, The Atlantic Constitution, The San Francisco Chronicle, The Louisville Courier-Journal and The Milwaukee Journal all said they had used news agency articles. The Minneapolis Tribune has used rewritten versions of combined news agency articles.

The San Diego Union, of which Herbert E. Klein, President Nixon's assistant for press relations, was editor from 1959 to 1968, used combined articles with banner headlines on three occasions.

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The Boston Globe was allowed to resume publishing articles supplied by news services and based on the new disclosures published elsewhere when an earlier Federal court order — prohibiting any mention of the contents of such disclosures — was amended. A hearing is scheduled for today on an order by Federal Judge Anthony Julian barring The Globe from publishing additional stories based on its own documents.

The Washington Post
Times Herald _____
The Washington Daily News _____
The Evening Star (Washington) _____
The Sunday Star (Washington) _____
Daily News (New York) _____
Sunday News (New York) _____
New York Post _____
The New York Times 13
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The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

Date JUN 25 1971

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65-74060 Sub A

54 JUL 12 1971

EX-117

REC-77

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REC 25

Gravel Goes Unpunished

Despite outraged comments by Republicans, the Senate yesterday appeared unlikely to discipline Sen. Mike Gravel (D-Alaska) for his Tuesday night performance with the Pentagon papers.

The documents Gravel read aloud at an extraordinary subcommittee session, and others he distributed to the press, disclose estimates of possible Soviet responses to U.S. moves in Vietnam, depict the Joint Chiefs of Staff as relentlessly pressing escalation of the war, and show former Defense Secretary Robert S. McNamara as opposed to escalation in the period prior to Tet.

McLeek

The Washington Post Times Herald A-1
 The Washington Daily News _____
 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
 Sunday News (New York) _____
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 The New York Times _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date JUL 1 1971

EX 101

70 JUL 12 1971 REC 25

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 Tavel ☒
 Walters ☒
 Soyars ☒
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 Tele. Room ☒
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 Gandy ☒

Poster

"A better case could be made that the publication of the Pentagon Papers will ensure the opposite effect, since our diplomats may fear their bad faith at the bargaining table will be exposed."

EX 101

REC-6

65-74060-A-

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133 JUL 6 1971

Just Explaining The Censorship

A Commentary
By Nicholas von Hoffman

B-1

Q. Were the American people told enough of the truth?

A. How do I know? I'm not Jesus. I'm not Solomon. I'm just Humphrey.

With that bit of confusion cleared up, the other lesser mysteries concerning the Pentagon Papers should solve themselves in short order. But no, neither McNamara, nor Rusk nor Lodge nor any of the others come forth even with modest disclaimers.

Some of Just Humphrey's fellow senators are talking and saying astonishing things. There is Dole of Kansas declaring as a politician he welcomes what The New York Times did, but as a citizen and a senator he thinks it's terrible, but that's Just Dole. Just Jackson from Washington is full of condemnations, too. He's decided that the publication of the Pentagon Papers will injure our intelligence operation.

It's unnerving, the triviality of the reasons they offer for their censorship of the press. Over at the White House, Just Klein (Klein, Herbert J., Just Nixon's director of communications) was giving out that there really isn't any very sensitive stuff in what the Times has been publishing, but that the administration had to repeal the First Amendment to frighten other people from leaking new stuff in the future.

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 The Evening Star (Washington) ☒
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 Sunday News (New York) ☒
 New York Post ☒
 The New York Times ☒
 The Daily World ☒
 The New Leader ☒
 The Wall Street Journal ☒
 The National Observer ☒
 People's World ☒

Date JUN 28 1971

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70 JUL 12 1971

McLek

Then they about-face and say publication of these papers will jeopardize the success of negotiations with other powers. A better case could be made that the publication of the Pentagon Papers will ensure the opposite effect, since our diplomats may fear their bad faith at the bargaining table will be exposed.

The best yuk is supplied by Melvin Laird, he of the glint in the eye and the chicken eatin' grin. He appears to hold that the material may not be published because it was stolen. The word suggests a guy in sneakers, a leotard and a domino crowbarring his way into the Pentagon by night and filching all 47 volumes.

We don't know who disseminated the material, but we know how it was done. The material was walked out of the Pentagon by the only people who had access to it, those with the highest security clearance. And who gave them the clearance? The government. The Pentagon.

Either all the dough they spend checking people out is wasted or they are pursuing policies and committing acts so rancid that even their most trusted people feel compelled to turn them in to the American public and the world. Since way back in the beginning of World War II, no American military secret has been let out of the sack by a newspaper. They've all come from present or past government employees. But Nixon's *Mitchellisti*, fearing it will be unable to inspire loyalty in its own servants, proposes to remedy the problem by gagging the press.

Although Washington has become a loony bin, not all the wildness is here. There is Federal Judge Murray I. Gurfein who, after searching the law books for any shadow of reason for siding with the government, finally rescinded his temporary restraining order on the Times. Before he did it, however, he told the newspaper how they ought to run their business: "It seems to me that a free and independent press ought to sit down with the Department of Justice and screen these documents as a matter of simple patriotism to determine if publication of any of them affects national security."

Well, that's Just Gurfein, but his words contain a straight warning to the owners of the Times, The Boston Globe, the St. Louis Post-Dispatch and The Washington Post to work within the system. Please, no more corporate civil disobedience, and understand that the term national security has the same meaning as "reasons of state," the expression that kings and dictators use when it doesn't suit their purposes to explain themselves.

Yet Gurfein is the least of it. The federal judge in Boston, Anthony Julian, not only stopped the Globe's press but wanted to seize the materials on which the paper's series was to be built, and in New York—in New York they've gone furthest yet. The Court of Appeals there is now telling the Times it may publish this, but not that. So, although the lawyers can explain that all these temporary restraining orders are ordinary procedure and nothing to get a feeling in your stomach about, the truth is that Nixon and his *Mitchellisti* have been able to censor the press, to exercise prior restraint on three major publications.

They have won. Not all the way, but a big bite, a bigger bite than ever before in our history. And even if they lose eventually, they will make the papers think a long time before they do it again. The aggravation and the hundreds of thousands of dollars in lawyers' fees are too costly. It's a different version of the same wearing down technique they use on the TV networks when they show a special or a documentary that displeases the White House.

So much for a free and independent press and that Eastern Establishmentality. Those jokers that Agnew dislikes so much. They're sometimes bookish and they don't spend all their Saturday nights at the country club singing and getting sloshed around the piano.

But the press has been pulling itself together. Not just denouncing either, although that's something when a conservative old newspaper like the Washington Star that wants to believe uses the word "repression" in an editorial. Papers have been coming forward and offering to take the remaining, unpublished installments and defy the government by publishing them.

It isn't easy. People who own papers and work for them have the urge to belong to the club and be accepted. In Washington this is especially so where a few years ago the government and the press was one seamless garment, but the fabric is ripping apart. The news people re-learned the old lesson that when they were cooperative and buddy-buddy, free and independent with Justice Department approval, that's when they actually and truly imperiled national security—when they didn't publish top secret documents, not when they did. We know for a fact because we've got 45,000 dead and 40,000 junkies to prove it.

It is fitting and traditional to close with a call for leadership. Are you running with us, Humphrey?

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READERS' FORUM: Letters to the Editor of The Star

The Press and U.S. Security

SIR: Your editorial on the Pentagon papers of June 15 missed the point (on purpose?) when it compared the papers to fascinating gossip. This is not the history of some dead and buried war. This is the tale of a war with continuing casualties. Mr. Nixon continues to speak of it as a war fought with only noble and generous motives on the United States' part. The promised goal is peace for a full generation. The stated enemy is Hanoi's aggressive policy.

The Pentagon papers raise questions important for today. Who is the aggressor? Half a year before Tonkin, the U.S. was directing espionage, sabotage, kidnappings and commando raids against North Vietnam despite the CIA reports that the Viet Cong insurgency was essentially a local (i.e., southern) movement. Why do we fight? The Pentagon papers say to "demonstrate the will and ability of the United States to have its way in world affairs." Assistant Secretary of Defense McNaughton said in a memo the war was being waged largely for U.S. prestige and "not—to help a friend."

If Richard Nixon felt it was valid to repeat the (possibly believed) claim that North Vietnam cannot be allowed to succeed because it is the aggressor, he may not now say that the discovery of U.S. aggression is irrelevant. We cannot pretend that the New York Times has revealed only historical tidbits. The Johnson regime was the aggressive force, not North Vietnam.

For The Star to argue the papers must not influence us in any way is to say we must ignore the collapse of the entire phoney legal framework built up to justify the war.

Edmund Blair Bolles.

SIR: I am astonished at the contention by the Star, in its June 20 editorial, that the New York Times had an "unqualified right" to publish secret documents. You said that "previous restraints" on publication must never be permitted and that this is a doctrine sacrosanct since Blackstone's day. I am not sure just where it is sacrosanct. I am sure that the editors of the Star are aware of the "D Notice" system that has prevailed in England for many years. Under this system, editors are informed by the government of information that is secret or sensitive and should not be reported. I understand that compliance is virtually perfect. It would be unthinkable in England for a paper to do what The New York Times and the Washington Post have so arrogantly and self-righteously presumed to do with the Top Secret Pentagon papers.

Marx Lewis.

REC-23

WELER

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 The Sunday Star (Washington) C-4
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 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

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SIR: In light of the gross deception of the American people by the Johnson administration, why are President Nixon, Mr. Laird, and this administration so protective and solicitous of Lyndon Baines Johnson? Do their efforts to protect LBJ amount to protection of members of the Nixon administration and its supporters in Congress and the Pentagon (such as Senator Goldwater, the House and Senate Armed Services committees, the Joint Chiefs of Staff, etc.) who participated in this deception?

Morris Waxler.

Bethesda, Md.

SIR: The disclosure of secret Pentagon reports on our involvement in the Vietnam War reflects the rank duplicity of the Johnson Administration and the collusion of the liberal press.

The position of the press in the 1964 campaign, vis-a-vis the candidates and the war, was the real problem. We have been constantly told recently that the press must be totally "free" in order to be a viable "adversary" of presidents. But the press played the role of presidential "advocate" instead, in 1964. Neither can the press hide behind the "secrecy" factor. Because in Washington that summer of '64 there were rumors of planned Vietnam escalation as soon as the president was reelected! War preparations were in progress and many knew this. Surely a few competent, concerned reporters could have found this information. But they were too busy "saving" the country from the "conservative menace."

Hal Schuster.

Silver Spring, Md.

SIR: Regardless of whether the New York Times or I agree or disagree with the war in Vietnam, those policy papers violate the Top Secret and Secret Classifications of our security system by compromising military and defense plans, and intelligence operations which can result in damage to this nation.

J. Clifford Johnson,
Former Deputy Director,
Office of Declassification Policy,
Department of Defense.

Falls Church, Va.

SIR: Has the Times become so sacrosanct that it is considered above the government and the welfare of the country?

H. L. G.

SIR: While the revelations concerning a 1967-1968 Pentagon study on the history of U.S. involvement in Vietnam are spectacular and disturbing, they have no rightful place in public discussion, today, of attempts to reach honorable settlement in Vietnam. Placing blame on LBJ, while it might salve a few notable consciences, does nothing but stir up dust long since settled, and infuse the issue with yet another dose of emotionalism when what it needs is rationality.

Lucy Lu Smith.

Arlington, Va.

SIR: Former Pentagon official and now law partner of peace-proponent Clark Clifford, Paul Warnke argues that the reports on the Johnson Administration's deepening involvement in Vietnam are "misleading". "A lot of good people look bad," he says; that is, a lot of officials are revealed to have quietly made plans to commit America to war without bothering to tell America.

Now several years and thousands of casualties later Mr. Warnke defends those past decisions while Mr. Clifford, who was surely aware of and involved in them, prates about the "immorality" of the war and talks of "solutions" via mysterious "sources." He has been eloquent in his damnation of Mr. Nixon and "his war."

As the sordid story of deceit and deviousness in

escalating Vietnam gradually emerges, one realizes what Mr. Nixon's real sin, in the eyes of these men, is. He has told the truth. He announced precisely what Vietnamization was and has stuck to it, despite the Clark Cliffords and William Fulbrights (who made a now-forgotten statement about presidents' "absolute authority" to conduct foreign policy unchallenged, back when Vietnam was escalating).

President Nixon is bringing home troops as announced, without secret memos and hidden motives. For this he is enduring the wrath and the innuendo of Mr. Clifford, et al.

With sincere regards,
Rae Zeeman.

SIR: The "Pentagon Papers" taken and printed by the New York Times are stolen materials. Both the supplier of the papers and the printer (the New York Times) are in violation of the Espionage Act. They are liable to prosecution. They should be indicted for this criminal activity.

Edward J. Sloane.

SIR: Across the U.S. our newspapers say America must surely benefit through the Times' publication of the Pentagon report on the Vietnam war.

How do they reach their conclusion? Have they, too, violated public law by reading the document. Involved are the Atlanta Constitution, Chicago Sun-Times, Boston Globe, Miami News, St. Louis Globe-Democrat. The list goes on and on.

If we can so pick and choose which U.S. law we will obey, how are these papers any different from H. Rap Brown? This is what he did!

Ross F. Rogers.

SIR: Supposing Johnny Doe, or you or I, were suddenly discovered to be in possession of some highly classified document of our federal government. Would not the FBI and other security authorities immediately, and rightly so, claim and retrieve the document in addition to making inquiries to apprehend the wrongdoers, the thieves who stole Uncle Sam's property?

The case of the Times being in possession of a top secret government document is truly perplexing. By what fantastic interpretation of civil rights can they hold on to it? Or make it public? What perverted sophistry about our democracy and freedom of the press can make a newspaper immune from the law that binds every citizen.

Martin Felsen.

SIR: I does not seem right that former President Johnson and his advisers have been ~~blamed~~ for our military escalation in Vietnam. In this respect the unauthorized disclosures in the New York Times have been biased since they have failed to show that President Johnson inherited a deteriorating situation from his predecessor and that Johnson's main objective was to win the war. The painful truth which has not been brought out by the Times is that John F. Kennedy is the one most responsible for our military involvement in Vietnam.

* * *

SIR: The furore over the "Pentagon Study" seems to me to be much ado about nothing. I can't see where the public was all that "deceived" by Johnson and his advisers. I'm wondering how much the public does not know about the Bay of Pigs fiasco and the Cuban missile crisis.

Much is made of the public's "right to know." Right to know what? Whatever the Times wants us to know? Or the Post?

P. Quinlan.

Rockville, Md .

* * *

SIR: As a bystander who read most of the cable traffic cited by Rep. McCloskey in the early years of the Vietnam War, I had no responsibility as a policy maker; but I cannot remain silent in the face of his malevolent distortions of history.

It is true that President Diem, so skillful in steering his country along the path of independence after Geneva, had by 1963 become a liability because of his many mistakes of judgment in combatting Communist insurgency. Nevertheless, while this country did not intervene in Diem's behalf in 1963, it most certainly did not engage in the deceitful conduct charged by McCloskey. Above all, we did not "aid and abet" the military group which overthrew Diem or condone his assassination, which was carried out by a young Vietnamese major acting on his own.

It is clear that the present "McNamara Papers" affair is another in a continuing series of concerted moves to blacken the name of this country before the American public and before the world.

Sincerely yours,
John K. McLean.

* * *

U.S.

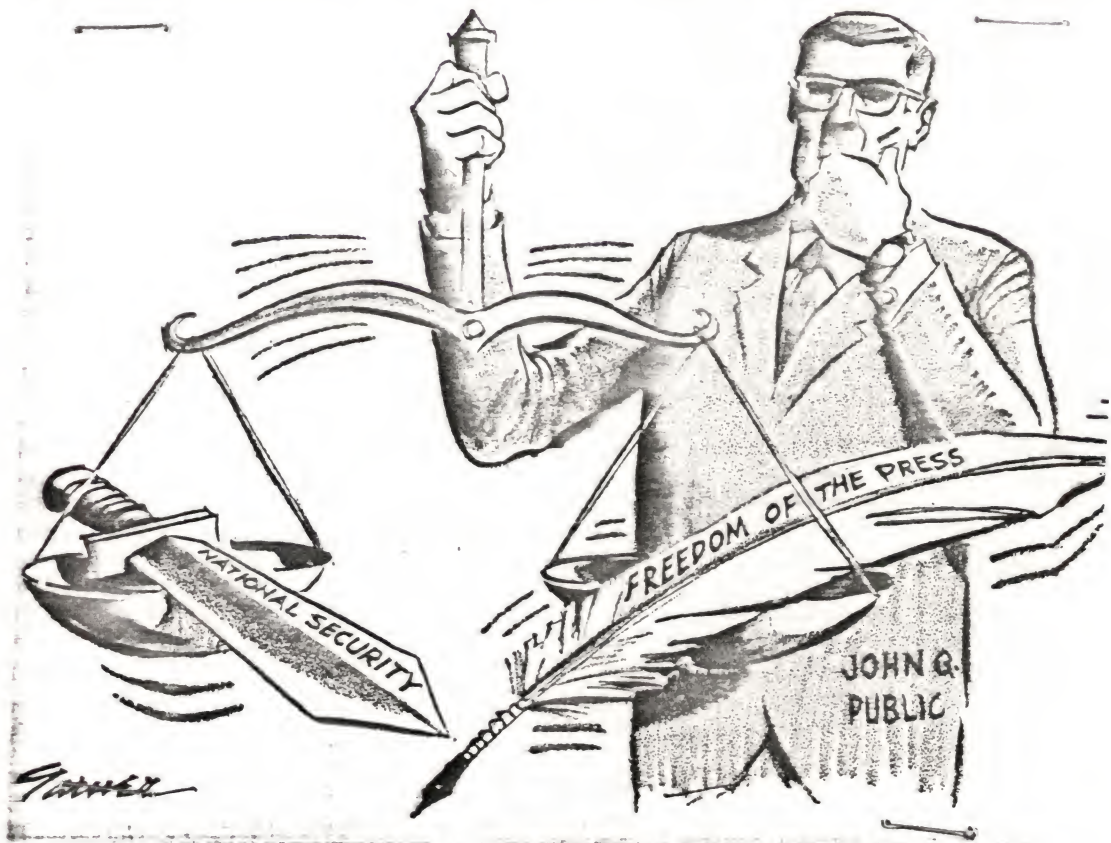
SIR: It occurs that, once again, the Nixon administration is acting on principle, and is being clobbered for it in the papers. The leaked Vietnam story is one of duplicity and double-dealing by the political opponents of the President. The report clearly puts the war on the shoulders of still-respected Democratic leaders. McNamara himself, the Bundy brothers, Katzenbach and even present peaceniks Harriman and Clifford were intimately involved in decisions to escalate the war without the consent or even the knowledge of the American people.

Surely this seems highly exploitable material for Mr. Nixon and his advisers. How easy to show that he is openly ending this war Democrats secretly started. But instead, Mr. Nixon has chosen to block publication of these papers, and so incur the wrath of the media for "censorship."

Classified documents were stolen and leaked to the press. This violation establishes a precedent that endangers all security; it weakens the government's credibility in dealing privately with other nations; it puts in jeopardy the government's coding system for sensitive communications. Apparently Mr. Nixon believed these matters sufficiently grave to override purely political considerations. The country would best be served if the media and the Democrats believed likewise.

Moya Mulqueen.

Annapolis, Md.





Department of Justice

FOR IMMEDIATE RELEASE
JULY 1, 1971

Attorney General John N. Mitchell issued the following statement today regarding the Supreme Court's decision in the matter of the United States versus the Washington Post and the New York Times versus the United States:

The decision of the Supreme Court speaks for itself.

Since the beginning of the investigation of the unauthorized disclosure of the Pentagon's classified documents, all avenues of criminal prosecution have remained open. A review of the Court's opinions indicates that there is nothing in them to affect this situation. The Department of Justice is continuing its investigation and will prosecute all those who have violated federal criminal laws in connection with this matter.

As further developments occur relative to Justice Department action, they will be announced at the proper time.

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UPI-198

(ELLSBERG)

BOSTON--ATTORNEYS FOR DR. DANIEL ELLSBERG FILED A MOTION WITH FEDERAL COURT TODAY SEEKING TO SEE ANY EVIDENCE OBTAINED AGAINST ELLSBERG BY WIRETAP.

ELLSBERG, 40, A FORMER PENTAGON AIDE WHO HAS ADMITTED LEAKING COPIES OF THE 47-VOLUME PENTAGON PAPERS TO NEWSPAPERS, FACES CHARGES OF ILLEGALLY POSSESSING AND FAILING TO RETURN THE TOP SECRET REPORT.

LAWRENCE P. COHEN, ASSISTANT U.S. ATTORNEY, SAID THE DEFENSE MOTION FILED IN U.S. DISTRICT COURT WAS DIRECTED TO FEDERAL MAGISTRATE PETER PRINCI. THE GOVERNMENT'S NEXT STEP, HE SAID, WOULD BE TO FILE AN ANSWER WITH PRINCI EITHER CONFIRMING OR DENYING IT HAD OBTAINED EVIDENCE AGAINST ELLSBERG ILLEGALLY.

COHEN SAID HE DID NOT KNOW WHEN THE GOVERNMENT WOULD RESPOND TO THE DEFENSE MOTION.

ELLSBERG, A SENIOR RESEARCH ASSOCIATE AT THE CENTER FOR INTERNATIONAL STUDIES AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, FACES A "REMOVAL" HEARING THURSDAY BEFORE PRINCI ON A TWO-COUNT INDICTMENT HANDED DOWN BY A FEDERAL GRAND JURY IN LOS ANGELES IN CONNECTION WITH THE CASE.

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WASHINGTON CAPITAL NEWS SERVICE

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'An Enlightened People'

The historic decision of the Supreme Court in the case of the United States Government vs. The New York Times and The Washington Post is a ringing victory for freedom under law. By lifting the restraining order that had prevented this and other newspapers from publishing the hitherto secret Pentagon Papers, the nation's highest tribunal strongly reaffirmed the guarantee of the people's right to know, implicit in the First Amendment to the Constitution of the United States.

This was the essence of what The New York Times and other newspapers were fighting for and this is the essence of the Court's majority opinions. The basic question, which goes to the very core of the American political system, involved the weighing by the Court of the First Amendment's guarantee of freedom against the Government's power to restrict that freedom in the name of national security. The Supreme Court did not hold that the First Amendment gave an absolute right to publish anything under all circumstances. Nor did The Times seek that right. What The Times sought, and what the Court upheld, was the right to publish these particular documents at this particular time without prior Governmental restraint.

The crux of the problem lay indeed in this question of prior restraint. For the first time in the history of the United States, the Federal Government had sought through the courts to prevent publication of material that it maintained would do "irreparable injury" to the national security if spread before the public. The Times, supported in this instance by the overwhelming majority of the American press, held on the contrary that it was in the national interest to publish this information, which was of historic rather than current operational nature.

If the documents had involved troop movements, ship sailings, imminent military plans, the case might have been quite different; and in fact The Times would not have endeavored to publish such material. But this was not the case; the documents and accompanying analysis are historic, in no instance going beyond 1968, and incapable in 1971 of harming the life of a single human being or interfering with any current military operation. The majority of the Court clearly recognized that embarrassment of public officials in the past—or even in the present—is insufficient reason to overturn what Justice White described as "the concededly extraordinary pro-

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tection against prior restraint under our constitutional system."

So far as the Government's classification of the material is concerned, it is quite true, as some of our critics have observed, that "no one elected The Times" to declassify it. But it is also true, as the Court implicitly recognizes, that the public interest is not served by classification and retention in secret form of vast amounts of information, 99.5 per cent of which a retired senior civil servant recently testified "could not be prejudicial to the defense interests of the nation."

Out of this case should surely come a total revision of governmental procedures and practice in the entire area of classification of documents. Everyone who has ever had anything to do with such documents knows that for many years the classification procedures have been hopelessly muddled by inertia, timidity and sometimes even stupidity and venality.

Beyond all this, one may hope that the entire exercise will induce the present Administration to re-examine its own attitudes toward secrecy, suppression and restriction of the liberties of free man in a free society. The issue the Supreme Court decided yesterday touched the heart of this republic; and we fully realize that this is not so much a victory for any particular newspaper as it is for the basic principles of freedom on which the American form of government rests. This is really the profound message of yesterday's decision, in which this newspaper rejoices with humility and with the consciousness that the freedom thus reaffirmed carries with it, as always, the reciprocal obligation to present the truth to the American public so far as it can be determined. That is, in fact, why the Pentagon material had to be published. It is only with the fullest possible understanding of the facts and of the background of any policy decision that the American people can be expected to play the role required of them in this democracy.

It would be well for the present Administration, in the light of yesterday's decision, to reconsider with far more care and understanding than it has in the past, the fundamental importance of individual freedoms—including especially freedom of speech, of the press, of assembly—to the life of the American democracy. "Without an informed and free press," as Justice Stewart said, "there cannot be an enlightened people."

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—PRESS FREEDOM WINS AGAIN—

In a 6-3, nine-opinion decision handed down yesterday, the U.S. Supreme Court ruled that the N.Y. Times and the Washington Post may continue publication—interrupted by government-obtained restraining orders—of passages from the world-famous top secret Pentagon report on the Vietnam war.



Potter
Stewart

Byron
White

We are, of course, happy to see the principle of freedom of the press win once more in its unending battle to continue as a U.S. constitutional cornerstone.

However, there were many interesting angles and aspects to this tremendous episode.

Chief Justice Warren E. Burger and Associate Justices Harry A. Blackmun and John M. Harlan dissented, all three complaining of the haste with which these complex cases were rushed through the courts.

Justices Hugo L. Black and William O. Douglas, to nobody's surprise, said in effect that government, under the Constitution's First Amendment, should have next to no right to prior restraint of publication.

These two old gentlemen's extremism was offset in large part, as we see the matter, by the common sense of the other four members of the majority, particularly Justices—

STEWART AND WHITE

—in their separate opinions.

Justice Stewart observed that "without an informed and free press there cannot be an enlightened people," and felt that there must be some checkreins on the huge power which the Executive branch of the government has acquired in recent decades.

Justice White said he thought the First Amendment would not prevent issuance of restraining orders in all cases where publication of some material would endanger the nation, and added:

Nor, after examining the materials the government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial damage to the public interest. Indeed, I am confident that their disclosure will have that result.

Evidently, however, Justice White did not think their publication would pose a clear and present threat to the nation's safety; so he went along with the majority.

It remained for—

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CHIEF JUSTICE BURGER

—to pay some highly interesting respects, if that is the word, to the N.Y. Times for printing this material which Daniel Ellsberg says he stole from the government.

Said the Chief Justice in part:

To me, it is hardly believable that a newspaper long regarded as a great institution in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents.

That duty, I had thought—perhaps naively—was to report forthwith to responsible public officers. This duty rests on taxi drivers, justices, and the New York Times.

So ends this chapter in the story of the Purloined Pentagon Papers—a story which has shaken the nation, stirred up the fiercest passions and hatreds, and conceivably hampered President Richard M. Nixon in his effort to end U.S. participation in the Vietnam war with honor to the nation.

Where the story goes from here, who knows? Let's ~~hope it~~ takes a turn for the better, not for the worse.

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JAMES J. KILPATRICK

Judging The Times on Law, Ethics, Morality

In its unauthorized publication of the Pentagon papers, the New York Times has asked that its conduct be judged in three areas — in law, in ethics, and in morals. It is no easy matter.

The law is unaccountably fuzzy. The documents in question were stamped "top secret-sensitive," pursuant to Executive Order 10501. Such a classification is explicitly reserved for those documents whose publication "could result in exceptionally grave damage to the nation." The test to be applied, according to a California case, is whether the classifying authority acted arbitrarily or capriciously.

Assuming for the moment that the documents were validly classified, with all the rubber stamps in proper order, The Times may have violated Title 18, Section 793(e) of the U. S. Code. This is a felony statute, punishable by up to 10 years in prison. It makes it a crime for any person "willfully to communicate or transmit" any document relating to the national defense, but only if the person having unauthorized possession of the information has reason to believe it

could be used to the injury of the United States or to the advantage of any foreign nation." Another line of defense takes shape.

The questions of law—the putative motions, pleadings, briefs, the infinite legalisms — are in a large sense irrelevant. From the moment these purloined copies first were put in the hands of the New York Times, the newspaper was dealing in material that presumptively it had no lawful right to possess. The government shared this presumption. The Times, in the short and ugly phrase, was trafficking in stolen goods.

From an ethical standpoint, it is immaterial whether the goods were stolen as a matter of law. The Times is much more than a great newspaper. It is an institution of power, trust, and integrity. In the immediate case, it symbolized the press as a whole.

But the questions of ethics are far more complex. The press has an abiding, inescapable duty to inform the people of the acts of their government. The Pentagon papers provided a record of some of

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the most important and controversial acts of government in this century. In this situation, finding itself in possession of the documents, The Times looked to the higher ethic: It is perhaps the only newspaper in America capable of giving blanket, verbatim coverage to such a story. The paper's decision to publish, as an ethical decision, was entirely proper.

Morality is something else, and here one encounters nuances with nice overtones of irony. The Times believed it was breaking a federal law, or that it might be breaking a federal law, and The Times went ahead anyhow. It felt other things were more important.

Very well. But many of us who have lived in the South in recent years have a vivid recollection of the moralistic lectures so often delivered by the New York Times on the matter of obedience to law. The South may not like the Civil Rights Act of 1964, we were told, but this was an act of Congress and it had to be obeyed. When the late Joe McCarthy was asking

civil servants to leak him classified documents, The Times thought it an "invitation to anarchy."

It is a curious moral code, one is bound to remark, that holds it wrong to leak classified data to Joe McCarthy, but a great public service to leak classified data to the New York Times. As in so many areas, it makes a difference whose Ochs is gored.

The government has blundered, it seems to me, in seeking an injunction to prevent further publication of the papers. The rule as to a free press is not to prevent its exercise, but to punish its abuse. Prior restraint on publication is intolerable; it cannot be condoned.

The government's proper move, if it believed Section 793(e) had been violated, was to arrest the publishers and editors and to seek criminal indictments against them. Such an effort doubtless would fail—who would convict The Times of anything but dullness?—but if the government hopes to preserve its hold on classified documents, the gesture ought to be made.

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CAPITOL STUFF

The Nation Hasn't Come Apart at the Seams

By JERRY GREENE

Washington, June 30—Rarely has the Supreme Court been angrier and more explosive in its opinions—majority and dissenting—than in the Pentagon papers case, truly a landmark that will stand long as a definitive guarantee for freedom of the press.

The nine justices were outspokenly mad for an assortment of reasons. Six of them appeared indignant at the government for even trying to challenge the rights of the press—indeed, Justice Hugo Black virtually elevated the press to a co-equal branch of the government in its duty to explore and to expose skulduggery.

But the dissenters, Chief Justice Warren Burger, with Justices Harry Blackman and John Marshall Harlan, concurred generally in the belief that the Justice Department blew the case in the manner of presentation. Burger particularly complained of the “unseemly haste.” But the critical issue was the failure of the government—and here again haste was a factor—to prove the contention that “irreparable damage” would result to the nation from continued publication of the history of U.S. involvement in the Vietnam war.

The Sting of the Secrets

The matter of the classification of the history as top secret hardly figured at all. And a clue to the thinking came last Saturday in a question from Justice Byron (Whizzer) White during the oral arguments before the court:

“Your case depends upon the claim, as I understand it, that the disclosure of this information would result in an immediate, grave threat to the security of the United States of America?”

“Yes, Mr. Justice,” answered Solicitor General Erwin Griswold.

All the tortuous way through the lower courts in Washington, New York, and Boston, the government kept arguing that the nation would suffer “irreparable damage” if all the secrets in the 47-volume report were laid before the public.

The White House made known the President's concern that such publication would run a grave risk of interfering with America's conduct of foreign affairs, and with our relations with both friendly and hostile nations.

There were affirmations of the danger from Secretary of State William Rogers and Defense Secretary Melvin Laird.

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Nothing But a Smell

But nowhere, in the course of the trials, at least those portions held in public, was there indication of proof, or anything more than a belief and a conviction.

It was reasonably obvious that any foreign government might have a right to suspect the security precautions maintained by the Pentagon when some-

one was able to filch and deliver to newspapers what now appear to be multiple copies of 47 volumes of top-secret material.

That suspicion was raised, however, the day the first enormous segments of the report appeared in newsprint, and the mere recounting of more of the same could hardly add to the uneasiness of foreign diplomats.

Back Off From Indictments

At least a couple of the members of the court, Justice White (and Potter Stewart, concurring with White) agreed, "Nor after examining the materials the government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial damage to the public interests. Indeed, I am confident that their disclosure will have that result . . ."

But White wrote, "The fact of a massive breakdown in security is known, access to the documents

by many unauthorized people is undeniable, and the efficacy of relief against these or other newspapers to avert anticipated damage is doubtful at best . . ."

It seems to have been the issue of "prior restraint" that hit the justices hardest, the move by the government to prohibit publication of material regardless of how it reached a newspaper. There was a strong implication throughout the opinions that if the government meant business, the proper procedure under law would have been to institute criminal proceedings.

Such action, of course, would have involved action by the government to obtain indictments against publishers for publishing secret information, a very sticky prospect for any elected official. In this instance—and of course this path is still open—President Nixon would in effect find his administration tied up in a brawling trial on the eve of an election year.

The Blame Is on Nixon

The court's decision, of course, will insure that the Affair of the Pentagon Papers will linger long and loudly in the political arena for now, more than before, the secrets will be bursting out all over. The jagged, disconnected tale of American intervention in Vietnam will be dragged out indefinitely—and there will be the interminable Congressional investigations to follow.

President Nixon, who might have escaped much damage personally from the papers because the report ended before his election, now stands to take blame for seeking to repress the press, to stifle the people's right to know.

It will matter not to his political foes that in some manner the government lawyers let him down by failing to convince both lower and higher courts that his conduct of foreign affairs would suffer if further publication of the secrets was not prevented. He will not be permitted to forget it.

But the great, unprecedented crack in the security system is now weeks old and the country hasn't come apart at the seams yet. The chances are the Republic will survive.

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The Pentagon Papers: Free-At Last

"Our democracy depends for its future on the informed will of the majority, and it is the purpose and the effect of the First Amendment to expose to the public the maximum amount of information on which sound judgment can be made by the electorate. The equities favor disclosure, not suppression. No one can measure the effects of even a momentary delay."

This passage from the ruling of U.S. District Court Judge Gerhard Gesell on June 21, 1971, comes close to summing up our own views in the case of the United States Government vs. The Washington Post—and, frankly, we would have preferred to leave it at that. Instead, the issue moved up to the Supreme Court and yesterday the government's plea for a restraining order against this newspaper and The New York Times was dismissed by a vote of 6-to-3. Perhaps the best way we can express our gratification with the outcome is to refer you to page one where we are resuming publication today of material from the Pentagon papers, otherwise known as the "History of U.S. Decision-Making Process on Vietnam Policy." That we are again free to print this material is an undoubted gain if only because to have remained under restraint would have been an immeasurable loss not for us alone, nor for the press alone, but for the public, and for the country, and for the democratic processes: *It is the purpose and the effect of the First Amendment to expose to the public the maximum amount of information on which sound judgment can be made by the electorate.*

But it has to be added that from the beginning of this unprecedented confrontation between press and government, the issue has not only been *what* we could print but also *when*. So it cannot be forgotten now that for a period of more than two weeks, in the case of The Times, and ten days in the case of The Post, and for shorter spans in the case of the Boston Globe and the St. Louis Post Dispatch, newspapers in this country, abiding by court orders, have, in effect, been prevented by government from publishing certain material. It is not enough to say that the material in question was historical (and therefore hardly urgent) because even history, freshly authenticated and in compelling detail, has the capacity to shape contemporary events. Another time we might be dealing with information of far greater urgency and *no one can measure the effects of even a momentary delay.*

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It can hardly be said, then, that yesterday's Supreme Court opinion, together with six separate concurrences and three separate dissents, effectively comes to terms with the tormenting issue at the heart of this dispute—the government's right of prior restraint of the press. It does not resolve the dilemma posed by the First Amendment's protections of the press, on the one hand, and the government's undoubted right to protect security on the other. For what the court majority seems to be saying, without attempting in this space to take into account the many conflicting conclusions stated by all nine justices, is that the government failed to make its point—not that a point was not necessarily there to be made. Some justices saw merit in the government's argument, as to the facts, and others were at pains to suggest that the government's

point might better be made in a different way—through criminal penalties for publication of at least some parts of this material.

So there is not all that much comfort, let alone clearcut law, to be found in yesterday's outcome, though in fairness to the Court and to the government, the affair of the Pentagon papers was an exceedingly difficult case on which to rest broad principles of law; it involved a breakdown of government security of such scope and magnitude that relief from the courts, in any practical sense, was probably never within the government's reach. It seems doubtful, in short, that we will see its likes again, and this says several, in some ways contradictory, things to us, not least of which is that the losses and gains on both sides can best be measured, not in theoretical law, but in real and practical terms.

We were dealing here, presumably, with 7,000 pages of classified material, some of it rated exceedingly sensitive. So it is not entirely surprising that the courts should have been reluctant to dismiss the government's plea out of hand—although the District Court here did just that. On the other hand, the sheer bulk of the material and the manifest insensitivity, in any real sense, of so much of it, necessarily undermined the government's argument, which came down in the end to a plea for highly selective restraints by the courts against only a small portion of the whole. Out of this process, perhaps, may come a positive boon in terms of a thorough re-examination of the classification procedures of the government; for even the government's counsel, as well as the administration, conceded along the way that the existing practices result in massive over-classification of material, for far too long a time.

But the real lesson of this affair, in practical terms, lies elsewhere, or so it seems to us, for what we have been witnessing over the past two weeks has been a belated and very nearly frantic effort by the government to remove from the public domain what should never have been lost—and under circumstances that are quite unlikely to repeat themselves. It has not been often in our history that a newspaper has found itself in possession of so prodigious an amount of classified material, and has begun to publish it, with a clear statement of what it had in hand, and a plain forewarning of what was still to come; such an opportunity for prior restraint does not normally present itself. And neither, for that matter, does the government often bundle together quite such an extraordinary load of classified material and leave it lying around quite so negligently.

The very uniqueness of this affair, in other words, has grossly distorted the realities, which are that the government has a very broad grant of authority to conduct its activities in secret, and enormous powers to preserve its essential secrets, and an impressive record of doing so. That it failed to do so in this case was never an argument, in our view, for suspending the First Amendment rights of the press or for limiting the prerogative of the press to exercise its own judgement in the handling of these documents. Still less was it an argument for denying the public its right to be informed.

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WITH ROGERS

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BY UNITED PRESS INTERNATIONAL

FOUR NEWSPAPERS STOPPED TEMPORARILY FROM PUBLISHING PARTS OF A SECRET REPORT TRACING U.S. INVOLVEMENT IN VIETNAM INDICATED THURSDAY THEY WOULD CONTINUE TO DO THEIR OWN EDITING IN RESPONSE TO A PLEA FROM SECRETARY OF STATE WILLIAM P. ROGERS TO VOLUNTARILY HALT PUBLICATION ON GROUNDS NATIONAL SECURITY MIGHT BE ENDANGERED.

ROGERS TOLD A NEWS CONFERENCE IN WASHINGTON HE WAS ASKING MEMBERS OF THE NEWS MEDIA TO VOLUNTARILY SUSPEND PUBLICATION OF MATERIAL HIS DEPARTMENT THOUGHT MIGHT HARM NATIONAL SECURITY. HE OFFERED TO SEND REPRESENTATIVES TO HELP NEWSPAPERS IDENTIFY THE MATERIAL.

THE NEW YORK TIMES AND THE WASHINGTON POST, IN A CASE DECIDED BY THE U.S. SUPREME COURT WEDNESDAY, SAID THE DOCUMENTS USED AS THE BASIS FOR THE SERIES IN THEIR NEWSPAPERS, AS WELL AS OTHERS AROUND THE COUNTRY, OFFERED NO THREAT TO U.S. SECURITY.

THE TIMES, THE POST, THE ST. LOUIS POST-DISPATCH AND THE BOSTON GLOBE SAID NATIONAL SECURITY AND PUBLIC INTEREST WERE CONSIDERED BEFORE THEY BEGAN PUBLICATION.

"THE WASHINGTON POST WILL CONTINUE ITS NORMAL PRACTICE OF TAKING WHATEVER STEPS IT BELIEVES ARE NECESSARY TO INSURE THAT INFORMATION IT PUBLISHES IS IN THE PUBLIC INTEREST," SAID MANAGING EDITOR EUGENE C. PATERSON.

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WASHINGTON CAPITAL NEWS SERVICE

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THE TIMES, IN AN EQUALLY BRIEF STATEMENT, SAID: "WE HAVE TAKEN THE INTERESTS OF THE COUNTRY, INCLUDING NATIONAL SECURITY, INTO ACCOUNT AT ALL TIMES IN OUR EDITING AND REPORTING OF THE DOCUMENTS."

DAVE LIPMAN, ASSISTING MANAGING EDITOR OF THE POST-DISPATCH, SAID: "WE HAVE NOT BEEN CONTACTED BY MR. ROGERS OR ANY OF HIS REPRESENTATIVES. WE WOULD BE UNABLE TO COMMENT UNTIL SUCH TIME AS WE ARE CONTACTED."

BOSTON GLOBE EXECUTIVE EDITOR ROBERT HEALY SAID HIS PAPER WOULD CONTINUE PUBLICATION AND WOULD NOT LET THE GOVERNMENT LOOK AT THE DOCUMENTS.

"WE HAVE BEEN AWARE OF WHAT THE SECRETARY SAID ABOUT NATIONAL SECURITY WHEN WE EDITED THE PENTAGON PAPERS FOR GLOBE PUBLICATION. WE WOULD AVAIL OURSELVES OF THIS OPPORTUNITY FOR GUIDANCE PURPOSES IF WE HAD MATERIAL WE CONSIDERED QUESTIONABLE, BUT WE DO NOT THINK WE HAVE ANYTHING IN OUR POSSESSION AT THIS TIME THAT WARRANTS CHECKING WITH STATE," HEALY SAID.

GOVERNMENT OFFICIALS SAID THE 47-VOLUME REPORT CONTAINS SOME PAPERS THAT COULD ENDANGER U.S. SECURITY OR CAUSE OTHER GOVERNMENTS TO LOSE FAITH IN THE UNITED STATES.

ROGERS SAID ONE AMBASSADOR--WHOM HE DID NOT IDENTIFY--TOLD HIM HIS COUNTRY COULD NO LONGER TRUST THE UNITED STATES BECAUSE OF THE LEAK OF THE SENSITIVE MATERIAL.

THE SUPREME COURT, SAID THE NEWSPAPERS HAD THE RIGHT TO PUBLISH THE MATERIAL AND THE GOVERNMENT HAD NOT PROVED NATIONAL SECURITY WAS IN JEOPARDY.

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UPI-72

(VIET REPORTS)

WASHINGTON --DEFENSE SECRETARY LAIRD TODAY ORDERED ALL CLASSIFIED
 INFORMATION WITHDRAWN FROM THE CUSTODY OF THE BIG RAND CORP. "THINK
 TANK" FOR ALLOWING THE LEAK OF THE PENTAGON PAPERS ON THE VIETNAM WAR,
 THE LARGEST CORMPOMISE OF CLASSIFIED MATERIAL IN HISTORY.
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ADD 1 VIET REPORTS, WASHINGTON (UPI-72)

LAIRD'S ACTION -- ANNOUNCED WHILE HE WAS FLYING TO TOKYO --
 SIGNALLED A CRACKDOWN SPECIFICALLY ON SECURITY PRACTICES AT RAND'S
 OFFICES IN WASHINGTON AND SANTA MONICA, CALIF. BUT PENTAGON
 OFFICIALS SAID IT PROBABLY WOULD RESULT IN TIGHTER GUARDING OF
 CLASSIFIED INFORMATION AND TOUGHTER SECURITY CHECKS AT ALL PLACES
 WHERE RECLASSIFIED MATERIAL IS HELD.

"LAX SECURITY PRACTICES AMONG DEFENSE CONTRACTORS CAN NO MORE
 BE TOLERATED THAN WILL SUCH PRACTICES WITHIN THIS DEPARTMENT," LAIRD
 SAID IN A MEMORANDUM TO THE SECRETARY OF THE AIR FORCE THAT ORDERED
 THE ACTIONS AGAINST RAND. THE AIR FORCE HAS ISSUED RAND THE
 MAJORITY OF ITS CONTRACTS.

THE CORPORATION HELPED IN PREPARATION OF THE SECRET STUDY
 WHICH WAS DISCLOSED TO THE NEW YORK TIMES AND OTHER NEWSPAPERS.
 DANIEL ELLSBERG, INDICTED BY A FEDERAL GRAND JURY FOR HIS ROLE IN
 "LEAKING" THE DOCUMENTS, WAS A FORMER ANALYST WITH RAND.

"IN CONNECTION WITH RECENT COMPROMISES OF CLASSIFIED DOCUMENTS
 INCLUDED IN THE STUDY 'U.S.-VIETNAM RELATIONS, 1945-1967' AND
 COMPROMISES OF RELATED DOCUMENTS, SECURITY PERSONNEL OF CONTRACT
 ADMINISTRATIONS SERVICES OF THE DEFENSE SUPPLY AGENCY FOUND A
 NUMBER OF DEFICIENCIES IN THE SYSTEM AND PRACTICES OF RAND CORP.,"
 LAIRD SAID.

FOR THIS REASON HE ORDERED THE AIR FORCE TO:

-- WITHDRAW "ALL CLASSIFIED DOCUMENTS" FROM THE SECURITY CUSTODY
 OF RAND CORP. AND PLACE THESE DOCUMENTS IN THE CONTROL OF AIR FORCE
 PERSONNEL IN SPECIAL AREAS TO BE SET UP AT EACH OF THE RAND OFFICES.

-- CONDUCT "A COMPLETE INVENTORY OF ALL CLASSIFIED DOCUMENTS AND
 MATERIALS IN THE POSSESSION OF RAND AND DETERMINE, UNDER THE
 REGULATIONS, RAND'S NEED-TO-KNOW BASED ON CONTRACTS OF RAND AND
 OF SUCH DOCUMENTS AND MATERIALS."

THE DEFENSE SECRETARY ALSO ORDERED CANCELLATION OF ALL "SPECIAL ACCESS" RAND NOW HOLDS TO CRYPTOGRAPHIC MATERIAL, INTELLIGENCE INFORMATION AND OTHER "SPECIAL" INTELLIGENCE MATERIAL.

AT A PLANESIDE NEWS CONFERENCE THIS MORNING BEFORE LEAVING ON A TRIP TO THE FAR EAST, LAIRD SAID NOTHING HE HAD YET READ IN PUBLISHED STORIES ON THE STUDY HAD ADVERSELY AFFECTED U.S. MILITARY FORCES IN VIETNAM.

HE ALSO SAID THAT HE EXPECTED TO HAVE ON HIS DESK BY JULY 19 A REPORT, NOW UNDERWAY, ON REVIEW OF THE PAPERS THAT COULD LEAD TO AT LEAST A PARTIAL DECLASSIFICATION OF THE DOCUMENTS.

LAIRD DID NOT SPELL OUT WHAT THE LAXITIES IN RAND'S SECURITIES PRACTICES OR SAY HOW THEY WERE RELATED TO THE LEAK OF THE STUDY.

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ELLSBERG 7-2, NX

BY MICHAEL WIDMER

CAMBRIDGE, MASS. (UPI)--DANIEL ELLSBERG SAYS HE DECIDED TO
 RELEASE THE SECRET PENTAGON PAPERS TO THE NEWS MEDIA WHEN
 PRESIDENT NIXON SENT TROOPS INTO CAMBODIA.

THE INVASION, HE TOLD A NEWS CONFERENCE THURSDAY, SHOWED THE
 PRESIDENT WAS DOING THE SAME THING HIS PREDECESSORS HAD DONE
 DURING THE ENTIRE PERIOD OF AMERICAN INVOLVEMENT IN INDO-CHINA --
 AND WHY THE PENTAGON PAPERS DO NOT TELL THE STORY BEHIND THE
 DECISION MAKING.

"WHAT MADE IT SEEM URGENT TO ME TO GET THIS HISTORY OUT IS
 THAT OFFICIALS OF THE NIXON ADMINISTRATION WERE FALLING INTO THE
 SAME TRAPS OF ARROGANCE AS THE ADMINISTRATIONS BEFORE THEM,"
 HE SAID. "WHEN WE INVADDED CAMBODIA, NO DOUBT WAS LEFT IN MY
 MIND THAT THE PAPERS SHOULD BE RELEASED."

THE BOSTON GLOBE'S REPORT ON THE PAPERS SAID PRESIDENTS JOHN
 F. KENNEDY AND LYNDON B. JOHNSON WERE BOTH PRESSURED BY THE JOINT
 CHIEFS OF STAFF TO SEND TROOPS OUTSIDE OF SOUTH VIETNAM.
 JOHNSON TURNED DOWN PLANS FOR OPERATION HIGH PORT, TO SEND TROOPS
 INTO CAMBODIA TO DESTROY SUPPLY DEPOTS, IN 1967, SAYING THE PLAN
 HAD ALREADY BEEN REJECTED.

NIXON GAVE PERMISSION FOR THE PLAN IN 1970.

ELLSBERG ACCUSED THE NIXON ADMINISTRATION OF "ALMOST ACTING
 OUT DRAMATICALLY ALL OF THE ATTITUDES THAT ARE REVEALED IN THE
 STUDIES IN THE LAST 20 YEARS."

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Ellsberg Tells Why but Not How

By JOHN LEWIS

Staff Correspondents of THE NEWS

Boston, July 1—Daniel Ellsberg criticized 25 years of government secrecy over United States involvement in Vietnam today and called publication of the secret Pentagon papers "the beginning of honest history."

Speaking at his first press conference since he was linked to the 7,000-page Pentagon report, Ellsberg said: "The jeopardy I took in leaking the papers was nothing compared with the jeopardy faced by three million men who were sent to Vietnam."

Would Have Surfaced

Dressed in a dark suit, the smiling Ellsberg told about 100 reporters in Cambridge that he would have revealed his connection with the papers if someone else had not done it. He said he remained unavailable as long as he thought more needed to be done.

The 40-year-old senior research associate at the Massachusetts Institute of Technology refused to say specifically to which newspapers he leaked the documents.

But he said none of the newspapers he approached refused to print the report.

Ellsberg refused to tell how he got the documents or how they were turned over to the press because, he said, other persons were involved.

"The press and I shared the responsibility of bringing this information to the public. I couldn't do it by myself. The press had to have the information," he said. Ellsberg admitted that some of the documents dealing with private negotiations were so sensitive that he withheld them from the press and gave them to the Senate Foreign Relations Committee instead.

"I dealt with materials of the

highest order of secrecy for 12 years," he said. "I am a professional. Not one page could meet the standard of grave damage to the national security. Not one single page in 7,000 could meet that criteria," he said.

A Creditable Job

He said that he and others involved in the study did a very creditable job. He said former Secretary of Defense Robert McNamara called for the study but kept his hands off it.

Ellsberg, who is charged with the unauthorized possession of top secret documents and could go to prison for up to 10 years, said the decision to turn the papers over to the press was a moral one that he reached after the Cambodian invasion.

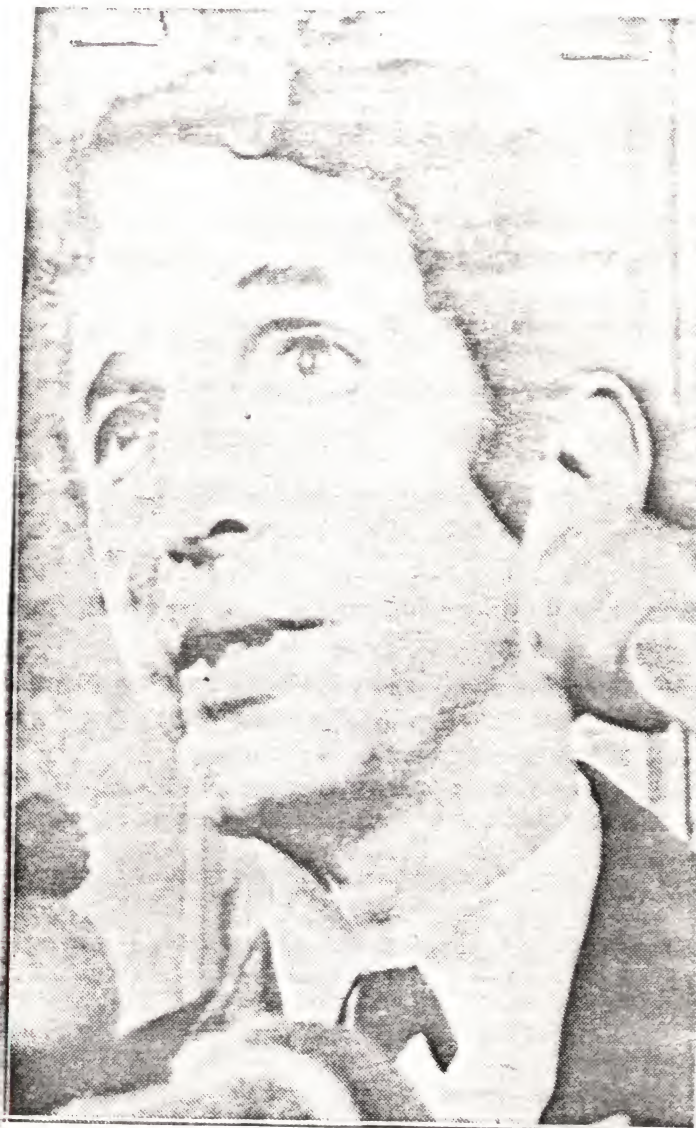
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UPI Telephoto
Daniel Ellsberg tells a press conference in Cambridge that he gave
senators some documents "too sensitive" for press release.

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(VIET REPORTS)

WASHINGTON--THE SENATE SHOULD CLOSE ITS DOORS AND DISCUSS WHAT TO DO WITH THE PREVIOUSLY SECRET PENTAGON PAPERS IT HAS RECEIVED, SEN. BOB DOLE, R-KAN., SAID TODAY.

IN A STATEMENT RELEASED FROM HIS OFFICE, DOLE SAID HE WROTE TO SENATE LEADERS HUGH SCOTT AND MIKE MANSFIELD, VOICING HIS CONCERN:

"THIS FULL SET OF DOCUMENTS APPARENTLY CONTAINS MUCH HIGHLY SENSITIVE INFORMATION WHICH HAS NOT BEEN OBTAINED BY THE PRESS."

THE SENATE NEEDS AN EXECUTIVE SESSION -- POSSIBLY AFTER IT GETS BACK FROM THE FOURTH OF JULY RECESS -- TO DRAW UP WAYS FOR DEALING WITH THE MATERIAL, DOLE SAID.

"THE GOOD ORDER AND DECORUM OF THE SENATE COMPEL OUR PROMPT ATTENTION TO THESE MATTERS," HE SAID.

MANSFIELD ACKNOWLEDGED RECEIPT OF DOLE'S LETTER AND SAID HE HAD ANSWERED IT. HE TOLD REPORTERS ANY SENATOR HAD A RIGHT TO MAKE A MOTION FOR A SECRET SESSION AT ANY TIME, AND THAT IF HIS MOTION WAS SECONDED, THE SESSION WOULD BE HELD.

MANSFIELD SAID HE TOLD DOLE TO SELECT A TIME FOR THE SESSION AND THEN TO DISCUSS IT WITH SEN. HUGH SCOTT, THE REPUBLICAN FLOOR LEADER.

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WASHINGTON CAPITAL NEWS SERVICE

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Mitchell Plans Prosecution For Pentagon Study Leak

By FRANK JACKMAN

Washington, July 1 (NEWS Bureau) — Attorney General John N. Mitchell warned today that the Justice Department would prosecute "all those who have violated federal criminal law" in connection with the Pentagon's Vietnam war study, despite the Supreme Court's ruling yesterday.

As for the court's 6-3 ruling that the New York Times and Washington Post could not be restrained in advance from publishing parts of stories based on it, Mitchell said only: "The decision of the Supreme Court speaks for itself."

First Indication

Mitchell's statement was the first public indication the government might be considering

further action. So far, Daniel Ellsberg has been the only person indicated. But Los Angeles grand jury that returned Ellsberg's indictment has not completed its work.

Mitchell said all avenues of prosecution have remained open since the beginning of the investigation. "A review of the court's opinions indicates that there is nothing in them to affect this situation," he said in a statement.

Investigation Goes On

Mitchell said that his department "is continuing its investigation and will prosecute all those who have violated federal criminal laws in connection with this matter."

Justice Department officials refused to enlarge on Mitchell's statement, but the implications were plain—the government can still prosecute those who violate federal laws in connection with the disclosures.

The law invoked by the department to try to stop publication of excerpts from the Pentagon papers in the Times, Post, Boston Globe and St. Louis Post-Dispatch was the espionage and Censorship Act. It is a criminal statute, although the government's action only took the form of civil law suits.

Justices' View

Three of the six justices who decided against any pre-publication ban yesterday — Thurgood Marshall, Potter Stewart, and Byron R. White — noted in their opinions that the government still had the right to institute criminal proceedings. In fact, White almost seemed to be pointing the way when he wrote:

"That the government mistakenly chose to proceed by injunction does not mean that it could not successfully proceed in another way . . . I am not, of course, saying that either of these newspapers has yet committed a crime or that either would commit a crime if they published all the material now in their possession. That matter must await resolution in the context of a criminal proceeding, if one is instituted by the United States."

Senate Squabble

In a related development, Rep. Charles S. Gubser (R-Calif.) introduced a bill that would permit the government to prosecute congressmen or senators who declassify secret papers. At present, the Constitution forbids law makers from being questioned "in other places" for speeches or debate in either House or Senate and protects them from arrest while attending sessions.

Gubser's bill was aimed at freshman Sen. Mike Gravel (D-Alaska), who staged a public reading of the classified documents at a hastily called session of a subcommittee he heads. Gravel's action angered Senate elders, but Democratic Leader Mike Mansfield said the young Alaskan apparently had not violated any Senate rules.

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Attorney General Mitchell
Not deterred by ruling

Ellsberg Says He Supplied All Files

By William Greider

Washington Post Staff Writer

CAMBRIDGE, Mass., July 1—Though reticent about how he did it, Daniel Ellsberg proudly acknowledged in public today that, with the help of some friends, he supplied all of the newspapers that received copies of classified Pentagon documents.

"The press and I, I guess at this point, share the responsibility for bringing this history, this news, to the American public," the 40-year-old MIT scholar told a press conference here. "I couldn't have done this by myself, obviously."

But Ellsberg, indicted by a federal grand jury for misuse of classified government documents, refused to discuss the specifics of how he obtained the 7,000-page Vietnam study or how he distributed portions of it. He would not answer specific questions linking him to The New York Times or any of the other individual newspapers which have printed stories about the documents.

"I'm not going to name any individuals," the former Pentagon planner said. "It is for The New York Times to decide how far they want to go in revealing its sources."

He said that, besides newspaper editors and reporters, he had assistance from others in distributing bundles of the secret documents to newspaper offices and in remaining "temporarily unavailable" until his surrender to authorities on Monday.

"It's implicit in what I've said that other individuals helped out," he said. So far only he has been charged.

Did he supply all of the newspapers? "To my knowledge, all of them," Ellsberg replied. "If somebody else was getting in the act, that's fine."

The former defense analyst, who helped write the now controversial study of the war's origins, explained why he called the press conference and why he would not name any others:

"I am painfully well aware that the action I took was a political act, a public act, hence the public had a right to know something of who I was and why I did it . . . I am not going to make the decisions for other individuals on what happens to their privacy."

Ellsberg denied that he chose antiwar newspapers in distributing the documents, but said: "I satisfied certain personal tastes. I wanted to give the information to the papers I thought had told me the truth in the past."

Ellsberg calmly answered questions for an hour in a crowded hall at the Commander Sheraton Hotel near Harvard Square while his wife Patricia and friends watched and occasionally applauded his performance. Right now, he emphasized, he would like the press and public to devote their attention to the Pentagon documents, not to his personal role.

"It's important for the public to read these documents, boring and often painful as they are," Ellsberg said, "for the time has come for the public to make up its own mind."

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He said he was "obviously delighted" with Wednesday's 6-to-3 decision by the Supreme Court which makes disclosure possible by removing the restraints on further publication by The Times and The Washington Post. In particular, he responded with feeling to the court's minority view that the printing of the documents could endanger American lives in Vietnam or lengthen the war.

"The concealment of these papers for (as long as) 25 years has led to the death of 50,000 American men and several hundred thousand Vietnamese in recent years and more than a million Vietnamese over the last 20 years," Ellsberg retorted sharply. "The odds have been weighted in favor of secrecy. Judgments of the American people can now be made in light of these documents on where secrecy has led us over 25 years."

The MIT professor, who once served the government himself with top security clearance, dismissed the argument that the government's security system is threatened by his example.

"The Executive Branch has received splendid loyalty from its employees over the last 20 years as evidenced by the surprises in these documents," Ellsberg con-

~~tended~~ "The ability of this country to keep secrets has gotten too good for its own good. This ability of government employees has served their boss, but not the country."

Ellsberg first became familiar with the material when he was helping to compile it in 1968. Afterwards, he secretly provided much of it in 1969 to the Senate Foreign Relations Committee, which chose not to release it. His one regret now, he said, is that he didn't provide the documents to newspapers earlier.

"The moral choice that's involved in something like this—and I say moral choice, not to be dramatic, but because it is a hard choice—is one that each person who's had access to this material has faced . . . Should secrecy override the need and the right of the public to have this kind of information?" Ellsberg said. "I reached the point where I couldn't opt for secrecy."

The documents and the analysis which Ellsberg helped to write have been criticized in some quarters because they provide an incomplete or distorted picture of events. Ellsberg himself agreed that much more should be learned and he urged former officials from the Johnson administration who are making complaints to make public their own private files to supplement the public's understanding. One questioner asked him to respond to Walt W. Rostow's remark that any student of

his would be flunked if he wrote such a distorted analysis.

"I'm not going to comment on individuals," Ellsberg replied "therefore, I'm not going to comment on whether a student of Dr. Rostow's could write a more comprehensive history. I do agree with him that it's an incomplete report . . . It's a beginning of history and it's a beginning of honest history."

Among other things, Ellsberg believes that the 47-volume report shows arrogance on the part of government leaders in making decisions which affect American lives, but not revealing them candidly to the public.

The Nixon administration's actions of the past three weeks, he said, "are almost an acting-out dramatically of all the attitudes contained in these documents. Their actions say our history is for them to know. I'll tell you a secret—they don't know it. They haven't read it."

Ellsberg charged that government deception also characterized the Nixon policy on Indochina: "Officials of the Nixon administration are subject to the same traps of arrogance . . . They're saying, 'We can do what the Democrats couldn't do,' just like the Democrats thought 'we can do what the French couldn't do.'"

The professor seemed undisturbed by the prospect of his own prosecution: "My jeopardy is small compared to the jeopardy that we asked three million men to take when we sent them to Vietnam."

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A¹ Source for All

Daniel Ellsberg said yesterday he was source for all newspapers that published the Pentagon documents.

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Press Decision: The Joy Is Premature

By LOUIS M. KOHLMEIER

WASHINGTON—Arthur Ochs Sulzberger, president and publisher of The New York Times, reacted with complete joy and delight. Katharine Graham, publisher of The Washington Post, was "extremely gratified."

But the elation of the distinguished publishers of the distinguished newspapers was at best premature and at worst could be proved to be downright wrong.

To almost anyone in the newspaper business, from high publishers down to lowly copy boys, the immediate delight of Mr. Sulzberger and Mrs. Graham over the Supreme Court's decision allowing their papers to resume publication of the top-secret Pentagon papers was not only understandable but shared. The newspaper business is a clubbish trade—some say profession—that closes ranks when one or several of its more prominent members are deemed to be unfairly threatened by the frightening power of government. "Freedom of the press" is its rallying cry, and so many papers rallied behind the Times and Post that government lawyers complained about the terrible unpopularity of their task.

The Times and Post were indeed fighting not merely for freedom from orders of lower courts that restrained them from publishing the Pentagon papers, but for the fundamental constitutional right of the press in a democratic society to inform the people about controversial issues, free of government censorship or, in legal terms, "prior restraint." When the Supreme Court decided, 6 to 3, that the government could not enjoin them from publishing more of the secret papers, and thus telling the public more about the origins of U.S. involvement in the Vietnam war, the Times and Post unquestionably won a major victory over the Nixon administration.

A Narrow Victory

But it was a narrow victory that may in the long run turn out to be of not much more than immediate significance. Indeed, an argument can be made that press freedom would have been better served had the whole episode not been brought before the courts.

The Times and Post didn't exactly take the issue to court, of course. They began publishing the Pentagon papers in mid-June, and President Nixon, through Attorney General John Mitchell, took the newspapers to court for revealing secrets that allegedly would endanger national security.

But the result was a historic confrontation between the constitutional rights of a free press and the constitutional power of the President, as the nation's Chief Executive and commander-in-chief of its armed forces, to protect and preserve the national security. History suggests that, when such rights and powers crash head-on, press freedom isn't likely to win in the long run, even at the Supreme Court. Moreover, the rather recent history of the newspaper business further suggests that the arguments for press freedom may not prove to be of iron strength if put to additional hard tests.

So far as immediate significance is concerned, the decision of the Supreme Court lifted the temporary orders of lower courts that had prevented the Times and Post for about two weeks from publishing further articles about the Pentagon papers. It said that the Constitution assumes a "heavy presumption" against prior censorship of the press, and that the government had failed in this case to carry its "heavy burden" of proving that the secret documents would sufficiently endanger national security to justify overriding the First Amendment.

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But the decision was only a brief three paragraph long and it was a "per curiam" opinion, unsigned by any member of the court, that simply announced the result. It was a rare decision, totally unlike normal Supreme Court rulings that explain how and why a result was reached, that elaborate on the application of that result and that are buttressed by the force of reason and, in the most important cases, by the force of philosophic and even moral discourse. The most powerful of such decisions are those, as in the 1954 school desegregation ruling, that are signed by all nine justices, but great weight attaches even when a majority of five signs or concurs.

Much Was Omitted

Thus the court's opinion said nothing about the value of a free press or an informed public to a democratic society. It said nothing about constitutional limits on presidential power, or about the historic clash between rights and powers.

This may have been due to the time pressures on the Justices. Unquestionably, it can sometimes take weeks to hammer out an opinion of the court to which all concurring Justices will subscribe, and the Times and Post decision was handed down a mere four days after oral argument was heard last Saturday.

But the end product will not be very useful as precedent in future head-on collisions. There were nine separate opinions by nine Justices, deeply divided into two distinct camps, and the real results will be known only in future decisions when either the court's advocates of press freedom or those of presidential power will prevail.

The press would have been better off if the collision had never gone to the courts, because if for no other reason newspapers for the first time in American history were censored, even if only temporarily, in the name of "national security." The Supreme Court's opinion did not say that the press could not be similarly restrained in the future.

But there are other and certainly more serious reasons. The individual opinions that were handed down gave a majority of at least five justices an opportunity to say two things that the Supreme Court has never before in history said: first, that the Constitution would not prevent the Justice Department from bringing criminal prosecutions against newspapers for publishing vital national defense secrets and, second, that Congress could pass a law allowing the President to censor newspapers, even though the 6-to-3 decision in the Times and Post case held the Executive Branch can't restrain the press by relying simply on a claim of the "inherent" powers of the presidency.

These individual opinions of five Justices don't amount to constitutional doctrine of course. But further opportunity may not be far off to write into constitutional law the holding that newspapers—meaning their editors and reporters and presumably their publishers—can be thrown into jail for publishing defense secrets. Attorney General Mitchell said yesterday that, in view of the five opinions, the Justice Department "is continuing its investigation and will prosecute all those who have violated criminal laws in connection with this matter."

If Mr. Mitchell prosecutes the Times and Post, it would be the first time in history that the Espionage Act, a law passed to thwart

Russian and German spies, was used against American newsmen. Even if he doesn't prosecute, the fact will remain that a majority of members of the Supreme Court have said that the First Amendment does not protect the press from criminal prosecution which, if successful, would mean stiff fines and prison sentences. All criminal laws are intended, in the broadest sense, to be deterrents and are not written simply to punish those who commit proscribed acts.

So it seems obvious that Wednesday's "victory" achieved by the Times and Post already has become something considerably less. The shower of individual opinions surely will have what the high court, in other times and cases, has called a "chilling" effect on the First Amendment.

If these results shock the sensibilities of the press, it is perhaps because the press has been lulled by a line of Supreme Court decisions that has widened press freedom. The long line, which began in the old, liberal Warren court and extends into the new and more conservative high court headed by Chief Justice Warren E. Burger, has freed the press almost entirely from fear of libel damages and, to a lesser degree, from federal and state censorship that relates to obscenity statutes.

Particularly in freeing the press from libel damages, the high court has spoken eloquently about the First Amendment and democracy, saying the press must be free to investigate and report if it is to inform the American public. But freedom from libel actions and from prosecution for violating obscenity censorship rules are wholly different matters than freedom to print government secrets that the President says will endanger national security.

Press censorship in the name of "national security" was, until the Times and Post case, an almost completely unexplored area of constitutional law, and better it had remained so. But the President's power under the Constitution to guard the nation's security on occasion has come into dramatic conflict with other constitutional freedoms, and the Supreme Court's decisions in these cases do not give comfort to the press.

In recent history, the high court as a practical ~~matter~~ has shielded the President's power to wage an undeclared war in Vietnam by refusing to hear cases arguing that the Constitution reserves to Congress the power to declare war. In a series of draft-case decisions the high court has upheld individual rights of conscientious objectors. At the same time the court has very carefully not allowed those rights to become so broad as to infringe on the President's authority to draft sufficient numbers of men for military needs.

The court's respect for presidential power and the needs of national security also can be traced far back into history. Before the Civil War, for example, the court upheld President Lincoln's power to blockade Southern ports, although Congress had not then declared war. In World War I, the court said the First Amendment did not mean the Sedition Act could not be used to imprison leafleteers who urged support of the Russian revolution. And in World War II the court unanimously upheld President Roosevelt's power to order the Army to herd some 100,000 Japanese-Americans into detention camps.

These and many more decisions illustrate the application of a doctrine which holds that only with the greatest care should the Supreme Court interfere with presidential power to conduct military and foreign affairs.

The decisions of at least five of the Justices in the Times and Post case demonstrated that the doctrine remains very much alive. Justice John M. Harlan's opinion, to which Chief Justice Burger and Justice Harry Blackmun subscribed, said, for instance: "It is plain to me that the scope of the judicial function in passing upon the activities of the Executive Branch in the field of foreign affairs is very narrowly restricted." The Harlan-Burger-Blackmun conservative trio, of course, accounted for the three dissenting votes in the case. But Justice Byron White, even while voting for the Times and Post, suggested that the Attorney General prosecute the papers under the Espionage Act, suggesting that the prosecution might serve as a good example for its "deterrent effect on the responsible as well as the irresponsible press." Justice Potter Stewart, who also voted for the Times and Post concurred with Justice White.

Further Rulings Likely

Given the government's appetite for secrecy and the press for news, more head-on collisions are inevitable, even if Attorney General Mitchell doesn't now prosecute the Times and Post. The sentiments expressed by the five Justices will find their way into fully reasoned decisions of the court. And the reasoning may well be buttressed with some arguments that have little to do with national security and a lot to do with the business of newspapering.

The arguments reared their heads in the government's cases against the Times and Post and they added up to an assertion that the press really is a commercial entity that doesn't always respect the principle of economic freedom, so why should the government respect press freedom? For instance, the government said, the Times and Post copyright their stories to retain economic control of their use. It said papers in the past have sought injunctions to prevent other papers from infringing on their copyrights.

The press may see no parallel. But Chief Justice Burger apparently did, when he rather sneeringly referred to the Times' claim to "sole trusteeship . . . of its journalistic 'scoop.'"

The decision obviously did not turn on newspapers' actions concerning economic matters. But Supreme Court decisions often are made of many parts, and in future cases it would be surprising if the government did not develop a line of reasoning that takes into consideration not only copyright privileges but such items as the Times' announced plans to rush out its Pentagon papers articles in paperback book form and the newspaper industry's successful campaign to win from Congress the so-called Newspaper Preservation Act. The act gave newspapers antitrust protection other industries don't enjoy.

And it may be that, among all the opinions that gave Mr. Sulzberger and Mrs. Graham great joy on Wednesday, the most significant words in the end turned out to be those of Justice Blackmun, the junior Justice:

"The First Amendment, after all, is only one part of an entire Constitution."

Mr. Kohlmeier, a member of the Journal's Washington bureau, covers the Supreme Court.

REVIEW and OUTLOOK

Disclosure and Security

The Supreme Court, in the Pentagon-papers case, has upheld the Constitutional stricture against press censorship and left The New York Times, The Washington Post and other newspapers free to publish material from the controversial documents.

But the way in which the court acted, with an unsigned decision to which three justices dissented and with each justice writing a separate opinion, shows that, while the legal question has been resolved for now, philosophical questions remain. The nine justices are almost as diverse in their views of this historic confrontation between press and government as the public obviously has been.

Yet the justices in their separate ways have provided some philosophical guideposts. Three propositions in particular are worthy of careful note.

The conflict, of course, was between the public's right to know and the government's right to conceal in the interests of national security. Mr. Justice Black stated the fundamental proposition—as embodied in the First Amendment to the Constitution—eloquently.

"In the First Amendment," he wrote in his opinion, "the founding fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The government's power to censor the press was abolished so that the press would remain forever free to censure the government."

This is a fundamental principle of the American system. The press and government are meant to be separate and sometimes in conflict with each other. The citizen can decide which he chooses to trust or believe—an option he would not have if the two worked hand in glove. To change this principle would be to radically change the system.

A second proposition was offered by Mr. Justice Stewart and it merits deep consideration by the public, the press, the Congress and the administration. He suggested that the best way for the government to protect security that is truly vital to the national security is to avoid secrecy that is not vital.

"For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical and careless and to be manipulated by those intent on self-protection or self-promotion," Mr. Justice Stewart wrote. The hallmark of a truly effective security system, he said, "would be the maximum possible disclosure, recognizing that secrecy can best be preserved when credibility is truly maintained."

The State Department and some other branches of this administration claim that they already are reviewing their classification policies and we can only hope that it will prove to be a really serious effort. We would hope that Congress will also exert strong pressure for greater disclosure and there are signs that it will do just that. Unwarranted secrecy and the failure to inform the public and Congress in advance of vital policy decisions has seriously weakened the credibility of the United States government.

Restoring that credibility may well be more vital to the nation's security than anything else the government could do. Substantive action, not mere salesmanship, will be ended and one of the most effective actions would be wholesale declassification of information that should long ago have been in the public domain.

The third guidepost was offered in the dissenting opinion of Mr. Justice Blackmun, who is concerned, as are many Americans, about possible disclosure by the press of government information that might directly affect national security. He argued, as did the two other dissenting justices, Messrs. Burger and Harlan, not that the majority decision was necessarily a misinterpretation of Constitution or law, but that it was too hasty in light of the national-security questions involved.

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Mr. Justice Blackmun noted that ~~the court's~~ ruling against censorship places a heavy responsibility upon the press to exercise care in its own judgments of whether to disclose information. If press disclosures should have the effect of jeopardizing troops, disrupting sensitive negotiations in matters of war and peace or other consequences of such dimensions the public has the right to hold the press responsible.

We have seen nothing in the Pentagon papers published so far that would even remotely endanger national security, and the government was obviously unable to make a convincing case that the papers contain any such information. But the press can never escape the fact that its freedom from censorship entails responsibilities to the nation.

Newspapermen might wish that the full court could have been unequivocal in upholding the freedom guaranteed by the First Amendment. The freedom was upheld, however, and that is what matters for the moment. If it all has led to a better understanding of where the nation's security really lies then it has all been worthwhile.

In our view, the nation's security lies in a continuing willingness of its people to face unpleasant facts, to engage in full and earnest debate and to protect the free, democratic institutions that make those things possible.

Rogers Asks Press to Allow U.S. Check for Harmful Data

By Bernard D. Nossiter
Washington Post Staff Writer

Secretary of State William Rogers yesterday urged the nation's press to permit the government to review in advance potentially damaging documents from the Pentagon papers.

State Department officials stand ready, he said, to identify items whose disclosure, they think, would "harm the security of the United States."

Rogers made his proposal before television cameras one day after the Supreme Court freed The Washington Post and The New York Times to print all the papers.

The Secretary of State did not comment on the Supreme Court decision as such. But he repeatedly said that if foreign governments lacked confidence in Washington's ability to keep confidential discussions secret, a "very serious problem" is created for diplomats.

In his prepared statement, Rogers said:

"We hope the press will recognize an obligation to refrain from the publication of information which would harm the security of the United States. The government remains ready to lend its assistance in identifying any documents which if disclosed would result in such harm."

In response to questions, Rogers suggested that newspapers consenting to his proposal consult Robert J. McCloskey, deputy assistant secretary for press relations. McCloskey will then steer them, Rogers said, to State Department specialists who will advise on any documents in question.

The Justice Department had succeeded temporarily in restraining newspapers from publishing stories that dealt with a still undisclosed list of documents from the Pentagon

study. It was this order that the Supreme Court dissolved, in a 6-to-3 vote, on Wednesday.

The Rogers plan echoes the dissenting opinion of Chief Justice Warren E. Burger who said it would not have been unreasonable for the press "to give the government an opportunity to review the entire collection and determine whether agreement could be reached on publication."

Ironically, it was Rogers' former law firm, now Royall, Koegel & Wells, that successfully argued the case for The Washington Post.

It is regarded as unlikely that newspapers publishing stories based on the Pentagon papers will accede to Rogers' request.

At The Washington Post, Managing Editor Eugene Patterson said:

"The Washington Post will continue its normal practice of taking whatever steps it believes are necessary to insure that information it publishes is in the public interest."

In a brief statement, The Times said: "We have taken the interests of the country, including national security, into account at all times in our editing and reporting of the documents."

Rogers said that since publication of the documents began, several governments have "expressed concern" about discussions they have conducted on confidential matters.

The ambassador of one unnamed country, Rogers said, has told him, "I am not going to trust your government from now on." This ambassador, the Secretary said, represented a country that has played a role in Vietnam peace negotiations.

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Rogers stressed that the United States must find ways to protect confidential talks. He observed that Washington and Moscow have agreed to keep secret their negotiations over a treaty to limit strategic arms.

What if some disgruntled employee did not like the conduct of those talks and published an article based on the secret exchanges? Rogers asked rhetorically. It would

pull the rug out from under those negotiations," he said.

Within the State Department, he continued, he welcomes a broad range of views. But he said he felt discussion would be "inhibited" if officials thought what they said or wrote would be disclosed.

If newspapers agree to his scheme, a reporter asked, what would happen should editors and officials disagree over what would harm national interest?

Rogers acknowledged that the Supreme Court ruling would leave the ultimate decision to editors. But "at least have the benefit of our views," he added.

Although the Supreme Court order had the effect of declassifying the Pentagon study for press publication, major portions of the record in the case retain a "top-secret" stamp.

These include the secret briefs filed with the Supreme Court limited to discussions of the contested material and the transcript of the oral hearings in the lower courts addressed to the same subject — whether specific items on a government-prepared inventory were in fact dangerous for the nation's security.

Government lawyers said the continued secrecy of these materials is essential because in some instances they made reference to materials not definitely known to be in the possession of either The Post or The Times.

A Supreme Court spokesman said the classified material would be returned directly to the parties. Attorneys for The Post said federal security agents have never lost possession of any classified material developed during the litigation.



WILLIAM ROGERS

... 'very serious problem'

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Pentagon Declines to Give Report To Subcommittee, All Legislators

By Spencer Rich

Washington Post Staff Writer

The Pentagon flatly denied yesterday that it had promised to print a copy of its secret Vietnam war study for each member of Congress.

At the same time, it turned down a demand by Rep. William S. Moorhead (D-Pa.) that it immediately furnish his House Foreign Operations and Government Information Subcommittee with complete copies both of the secret Vietnam papers and of the "command and control" study of the Gulf of Tonkin Incident.

Press Officer Jerry W. Friedheim said the Pentagon's position right now is that the

documents have been made available to both the House and the Senate leadership and that any requests for access to the documents would be handled by the congressional leaders.

Friedheim said Pentagon officials are reviewing the papers with a view toward developing a sanitized version of the 47-volume Vietnam history which might eventually be made available on a general basis, but it is not yet decided whether to print that version or how to distribute it.

The position described by Friedheim yesterday puts the Defense Department directly

in conflict with Moorhead's subcommittee.

Moorhead, acting under title of the U.S. Code which he said requires federal agencies to make information available when sought by six members of the full Government Operations Committee, had demanded that Defense Secretary Melvin R. Laird hand over both the Vietnam history and the command and control study by 5 p.m. June 30.

Moorhead, whose subcommittee is conducting a freedom-of-information inquiry, felt it would be impossible to work with the single copy provided the House.

The copy is under the jurisdiction of the Armed Services Committee and cannot be viewed by staff personnel.

After learning of the Pentagon turnaround by letter late Wednesday, Moorhead shot back a letter to Laird yesterday, again demanding the requested documents and warning Laird that "the Department is in violation of the law and setting a poor example to our citizenry." Moorhead said the subcommittee might "institute further action" if Laird didn't comply.

The report that the Pentagon had promised eventually to print up an uncut version of the Vietnamese war history for members of Congress also came from Moorhead's subcommittee. Staff director William C. Phillips said Wednesday afternoon that Rody Johnson, the Pentagon liaison man with Capitol Hill, had told him by telephone that the uncut documents would be printed for each member of Congress.

Johnson and later Friedheim, however, subsequently denied that such a promise had been made, whereupon Phillips said he had recorded his telephone conversation with Johnson and thereby had proof.

Johnson said yesterday it was a "misunderstanding." Friedheim also called the matter a misunderstanding, but Phillips insisted that Johnson had made the statement.

Friedheim said, "We are reviewing the Pentagon papers, but not the command-control papers, with a view toward getting a sanitized version

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into shape. Then the Secretary will decide who to give it to and in what form." He added, "There is a popular rumor that a cleaned-up version will be ready imminently. That is incorrect. He had estimated earlier that some cleaned-up version would be ready "sooner than 45 days."

At least one member of Congress, House GOP Leader Gerald R. Ford (Mich.), said yesterday that the Secretary of Defense should simply declassify the papers, but not print up a special copy for each member.

In accord with the stated policy that the papers, for the time being, should be in control of the House and Senate leadership, who would decide on congressional access, Laird agreed in a telephone conversation with Senate Majority Leader Mike Mansfield (D-Mont.) to make a second full copy of the Vietnam war history and command control study available to the Senate. The one copy of each now officially in Senate possession is being held by Secretary of the Senate, Frank R. Valeo.

Mansfield said that when the second copy arrives, there will be one for the Foreign Relations Committee and one for the Armed Services Committee, with each handling it as it normally does classified matter.

This will allow the Foreign Relations Committee to go ahead immediately with its study of Southeast Asia policy-making, with access for qualified members of its staff.

The copy now in Valeo's office is accessible only to senators who are not permitted to take notes. Only three senators had viewed the document through noon yesterday—J.W. Fulbright (D-Ark.), Harry Flood Byrd Jr. (Indep.-Va.) and Charles H. Percy (R-Ill.).

President Nixon, meanwhile, met yesterday with a special committee he has appointed to recommend new policies for declassifying documents. Its work "does not bear directly" on the Pentagon papers, according to Assistant Press Secretary Gerald Warren.

Sen. Mike Gravel (D-Alaska), who astonished his colleagues by hastily calling a special subcommittee meeting late Tuesday night and there making public a portion of the Pentagon papers which he had obtained privately, returned to the Senate yesterday and had a long talk about the incident with Majority Leader Mansfield.

"I don't think he intends to do it again," said Mansfield, who repeated that he would oppose any move to censure or punish Gravel for the incident.

Some Republicans had demanded punishment, but Mansfield, while apparently, unhappy with the incident, opposes it.

Aides to Gravel said he is not sorry for having read out the classified documents and then distributing copies to the press (some of which have not yet been returned.) He felt it was urgent to get the material to the public and did it the only way he could, they said.

It appears possible that Gravel will take to the Senate floor next week to explain his motives and to assert that he had no intention of embarrassing the Senate.

Gravel aides said he is prepared to pay all stenographic and other relevant expenses out of his pocket if the Senate determines that the meeting of his Buildings and Grounds Subcommittee was not a legally called meeting and therefore cannot be paid for by the Senate. Aides said Sens. Edmund S. Muskie (D-Maine) and Birch Bayh (D-Ind.) had phoned Gravel with supportive comments.



SEN. MIKE GRAVEL
... a long talk.



REP. GERALD R. FORD
... just declassify.

War File Charges Planned

Mitchell Vows To Prosecute All Violators

By Ken W. Clawson
Washington Post Staff Writer

Attorney General John N. Mitchell said yesterday the government will prosecute "all those who have violated federal criminal laws" in connection with disclosure of classified Pentagon documents.

Mitchell said that Wednesday's Supreme Court ruling that The New York Times and The Washington Post cannot be restrained from publishing the secret papers doesn't affect future criminal prosecutions.

"Since the beginning of the investigation of the unauthorized disclosure of the Pentagon's classified documents, all avenues of criminal prosecution have remained open," Mitchell said. "A review of the court's opinions indicates that there is nothing in them to affect this situation."

Neither Mitchell's statement nor Justice Department officials indicated whether the government's investigation was aimed at persons who allegedly copied, secret documents and distributed them to several major newspapers or whether the probe was aimed at the newspapers themselves.

One high Justice Department official said the government has been so preoccupied over the last couple of weeks with seeking to enjoin newspapers from future publication of the documents that it has not completely investigated possible violations of federal law.

However, a former Defense Department analyst, Daniel Ellsberg, has been indicted by a federal grand jury in Los Angeles for allegedly violating a section of the Espionage Act and for allegedly stealing government property in connection with the leak of the documents to the press.

The Los Angeles grand jury still is hearing testimony, but a Justice Department official raised the possibility yesterday that another grand jury might be empaneled in Washington or New York. The official, who asked not to be identified, said it was premature to discuss the possibility of a second grand jury because "the FBI investigation is nowhere near complete."

Regarding the 6-to-3 decision by the Supreme Court upholding The Times and The Post, Mitchell would say only that the "decision . . . speaks for itself."

Nor would the Attorney General say when the government would decide whether to take criminal action.

He said only that future Justice Department moves would be announced "at the proper time."

It was learned that the government is considering moving on one or more of four federal criminal statutes.

1—Section 18 of the United States Code 641 which says: Whoever embezzles, steals purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any proper made or being made up contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted . . . can be fined up to \$10,000 or sent to prison for up to ten years.

If the value of the property is less than \$100, the fine can be up to \$1,000 and the prison sentence up to one year.

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2—Section 18 of the United States Code 2071 which says: States willfully and unlawfully conceal, removes, mutilates, obliterates or destroys or attempts to do so, or takes, carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court in the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined up to \$2,000 or imprisoned not more than three years or both.

3—Section 18 of the United States Code 371 which says: If two or more persons conspire either to commit any offense against the United States, or any agency thereof in any manner or for any purpose, and one or more such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000

or imprisoned up to five years, or both.

If, however, the offense the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for each conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

4—Section 18 of the United States Code 793: This deals with the gathering and transmitting of national defense information under which the government sought civil restraint in its effort to block future publication of the secret Pentagon documents. It provides a penalty of up to \$10,000 or 10 years in prison or both for violations.

The statute requires the government to prove that the defendants gathered and transmitted information "with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation. . ."

This is one of several sections of the Espionage Act that Justices Byron White and Potter Stewart referred to in their concurring opinions Wednesday.

"If any of the material here at issue is of this nature the newspapers are presumably now on full notice of the position of the United States and must face the consequences if they publish," White said.

However, other justices said they believed that both newspapers had published parts of the documents in good faith

and without intention to harm the national security.

During oral arguments in the Supreme Court on Saturday, Solicitor General Erwin N. Griswold, in response to a question from White, said he doubted that criminal prosecution of The Post and The Times would be "practical" if the court removed restraints on publication. He told White:

"I find it exceedingly difficult to think that any jury would convict or that any appellate court would affirm a conviction of a criminal offense for the publication of materials which this court has said could be published. Simply as a practical matter, whether it was a crime or not [a newspaper would say in its own defense] these are the same materials that were involved in The New York Times case. All we did was publish them. I find it difficult to think that such a case should be prosecuted or could effectively be prosecuted."

U.S. District Judge Murray I. Gurfein in Manhattan wrote in his June 19 opinion upholding The Times that it was "doubtful" that Section 793 of the U.S. Code "could be applied to the activities of The New York Times."

"For it would be necessary to find as an element of the violation a willful belief that the information to be published 'could be used to the injury of the United States or to the advantage of any foreign nation.' That this is an essential element of the offense is clear."

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Associated Press

New York Times publisher Arthur Ochs Sulzberger as
he discussed high court ruling at press conference.

11-7

Martha Mitchell Calling— On Pentagon Papers

By ISABELLE SHELTON
Star Staff Writer

Martha Mitchell has been on the telephone again, this time criticizing the news media for publishing the Pentagon papers.

"I resent, regret and abhor that the news media has taken upon itself to interfere with possible lines of communication with the Viet Cong," Atty. Gen. John Mitchell's outspoken wife said yesterday in a telephone call to The Star.

"I deplore the indiscreet judgment, that smells of political implications, on the part of the press, which has reached such an extent that it may result in complete suppression of the press — in which event it will have caused its own death," she said.

She was speaking "as a mother who has a child on the front lines" in Vietnam, Mrs. Mitchell emphasized. "When it comes to being a mother, you fight regardless of whether you fight against the administration or anyone else."

"Can you imagine how this is affecting their morale on the front lines?" she said.

"They are undermining the morale of the troops by the unleashing of this controversy," she charged.

"And they also are interfering with the negotiations with the Viet Cong as well as releasing our secrets to the enemy."

Mrs. Mitchell said she has not heard specifically about the Pentagon papers from her son, Army 1st Lt. Jay Jennings, 21, who heads a tank unit. There has not been time to hear from him on that subject, she said. "It takes his letters three weeks to get here."

The constant underlying theme of all his letters has been concern about how troop morale is being damaged by anti-war sentiment at home, she said.

"Every letter has an undercurrent of concern about morale over there—which of course is triggered by what is going on in this country."

The attorney general's wife said reporters have been "ask-

ing and asking and asking" for a statement on the Pentagon papers. "I resisted the opportunity until after the Supreme Court had ruled," she said.

She has no quarrel this time with the court, which she sometimes has criticized in the past, Mrs. Mitchell said. "The court did not hamper the government in anyway. They can still prosecute, and they're going to prosecute anyone who violates the law."

Mrs. Mitchell sought to stress that she was not seeking to attack the press. "I think the greatest thing going for this country is freedom of the press, and I don't want to see them destroy themselves," she said.

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The Pentagon Papers (Cont.)

It is sometimes useful after a great conflict has been ended by what seems like a clean victory (or defeat), to examine where things really have been left, in practical terms. In the affair of the Pentagon Papers, and insofar as the judicial processes are concerned, where things stand as of today is that the newspapers—not just the Washington Post, the New York Times, the Boston Globe and the St. Louis Post Dispatch which were involved in litigation, but all newspapers as well as television and radio—are apparently now free to do what they wish in the way of communicating to the public the contents of classified government documents, some parts of which have been held to be extremely sensitive and capable of doing grave and irreparable damage to national security if published. But the conflict has not really been ended by the judicial arithmetic. That the 6-to-3 vote by which the Supreme Court decided the matter is a winning margin is not the same as saying that it's the end of it, because the government plainly continues to believe that its original point was valid, just as the newspapers continue to believe that it was not. The issue, and the confrontation, are still with us.

So it is hardly surprising that we should be hearing ominous rumblings that the government will pursue the matter through criminal prosecution of the newspapers if they in fact do what the government sought, by injunction, to prevent them from doing in advance. Deterrence by punishment is the only legal remedy the government has left and it would be exceedingly foolish for anybody to assume that this is an idle threat. The Attorney General has stated it quite explicitly and the Secretary of State has balanced it with an offer to help resolve the problem by making available expert government guidance as to what can now be safely published from the war documents and what cannot. In other words, what the government seems to be saying is that, the court decision aside, the press (by which we mean all the media) must come to terms in a reasonable way with the government or face the consequences of further court action, in the form of criminal penalties after the fact.

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In our view, something like this might have been a better way for the government to have started out—with a request for an opportunity to discuss the problem, to warn of the specific dangers, and to try to work it out to the satisfaction of all concerned. But it is not easy for an administration which has chosen to make the press the principal target of a sustained and bitter political campaign of abuse and intimidation and villification to turn around abruptly and begin dealing with publishers or broadcasters in reasonable, constructive terms when it suddenly discovers that it has lost control of 7,000 pages of classified documents. And it is not in the nature of this administration, in any case, to settle out of court, as it were, to look for reasoned, mutually acceptable compromise. It has become evident over the past few years, that for some reason the Nixon Administration prefers to find challenges where there are none; to see virtue in combat almost for combat's sake; to thrive on paper victories at the risk of real defeats. How else to explain the nomination of a Judge Carswell after the defeat of a Judge Haynsworth? Or the all-out effort to rescue a doomed SST? Or the pursuit of a petty triumph over John Kerry and the Vietnam Veterans Against the War, all the way to the Supreme Court, over the question of whether they could camp out for a few nights on the Capitol grounds? Or the incarceration for as long as 40 hours of Mayday demonstrators, and the persistent effort to prosecute them, long after there was any hope of success, the proper arrest procedures having been waived, and the courts having judged that there was no way to prosecute? It pretty much figured that the administration would persist in seeking to restrain the

publication of the Pentagon Papers long after they were beyond reach and popping up in one newspaper after another faster than they could be suppressed; and it also figured that, for the government, this was going to be a losing game in terms of its proclaimed objective, which was to retrieve highly sensitive and potentially damaging information from the public domain.

But this does not make it necessarily or entirely a winning game for the press, whose public interest does not end with the people's right to know or its own right to publish without prior restraint. A vital constitutional principle has been upheld. But if you assume, as we do, that a newspaper ought to operate in the public interest and that the public has no interest in doing grave and irreparable injury to this country—either by the release of genuinely sensitive information or by reducing the government even to the appearance of

impotency on an issue it has proclaimed to be vital—then a very real and practical problem remains to be resolved. And the problem, it must be added, is almost as acute for the press, in a sense, as it is for the government.

What it comes down to now, as far as it can be determined (which is not easy, so much of these proceedings having been conducted in secrecy imposed by the very nature of the material), is that the government has finally narrowed its definition of highly sensitive material in the Vietnam documents to a relative handful of items, having to do, most particularly, with communications, code-breaking and the like, and to some volumes having to do with the diplomatic history of the war—volumes which Mr. Daniel Ellsberg has indicated he held back, having decided on his own that they were too hot to handle. What the government presumably needs is some assurance from the press, in the wake of the Supreme Court's go-ahead, that this selected list of items will not be published—some sort of face-saving indication that it can display to its own officials and to foreign governments that it has not in fact been rendered powerless by the courts in this affair, something, in short to show all concerned that the United States Government has not only the will but the capacity to exercise some control over its most essential secrets.

But the press, on the other hand, has to be exceedingly careful that any undertakings made in this regard do not compromise the principle which the Supreme Court has just upheld; that the choice and the judgments remain free of government dictates. It would not have been an easy dilemma to resolve at best, with any administration. It is made all the harder by this one, and by what has already been done in this case. It may well be beyond reasonable, let alone effective, solution now. But it would be easier to resolve if the administration would abandon its prejudgment that the press is either indifferent to the dangers which the government warns of, or professionally incapable of acting with responsibility.

In a very few days the Pentagon Papers will have run their course. Since the government is no longer claiming that everything in these documents is properly classified and accordingly forbidden, and has yet to argue that anything so far published has done the sort of real and irreparable damage which the government first warned against, perhaps the first thing for the government to do would be to suspend judgment until the record of press performance in this instance is complete. In the last analysis, when the government's own security enforcement breaks down, a demonstration of responsible self-restraint on the part of the press is the next best guarantee the government can have that all is not lost—even when so huge a volume of sensitive material as the Pentagon Papers is allowed, under circumstances which can largely be attributed to negligence on the government's part, to work its way out of control and into the public domain.

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ADV FOR AMS MON JULY 5
 BY NICHOLAS DANILOFF

WASHINGTON (UPI) --FOR THE SOVIET PRESS, THE SECRET PENTAGON PAPERS ON THE VIETNAM WAR PROVIDED THE CHANCE FOR A FESTIVAL OF ANTI-AMERICAN DENUNCIATION. FOR THE VOICE OF AMERICA THE STRUGGLE BETWEEN PRESS AND GOVERNMENT BECAME A CHALLENGE IN COMMUNICATION.

"THE 7,000 PAGES -- 2.5 MILLION WORDS -- OF THE PENTAGON'S REPORT," MOSCOW RADIO DECLARED CONFIDENTLY JUNE 17 IN A DOMESTIC SERVICE BROADCAST, "HAVE ESSENTIALLY BECOME A VERDICT OF GUILTY ON THE UNITED STATES, EXPOSING THE U.S. MILITARY AND THE WHOLE OF THE U.S. POLITICAL SYSTEM."

FROM THE PUBLICATION OF SECRET DOCUMENTS BY THE NEW YORK TIMES JUNE 13 UNTIL THE SUPREME COURT RULED JULY 1 IN FAVOR OF THE TIMES AND THE WASHINGTON POST, THE SOVIET MEDIA HAD A FIELD DAY.

RADIO BROADCASTS AND NEWSPAPER COLUMNS TIRELESSLY REHASHED THE ALLEGED DECEIT OF PRESIDENT JOHNSON IN CALLING FOR NO WIDER WAR IN THE 1964 ELECTION CAMPAIGN WHILE THE DEFENSE DEPARTMENT WAS PREPARING CONTINGENCY PLANS FOR ESCALATION.

ANOTHER MAJOR SOVIET PRESS THEME WAS THAT PRESIDENT NIXON INCREASINGLY NERVOUS ABOUT THE DISCLOSURES, WAS ORDERING THE U.S. COURTS AND JUDGES TO MAKE RULINGS AGAINST THE NEWSPAPERS.

THERE WAS A CERTAIN AMOUNT OF DISREGARD FOR THE FACTS IN THE SOVIET TREATMENT OF THE AFFAIR. MOSCOW RADIO, FOR EXAMPLE, ON JUNE 15 SAID PRESIDENT NIXON, LIKE FORMER PRESIDENT JOHNSON, WAS USING THE TONKIN GULF RESOLUTION TO PROSECUTE THE VIETNAM WAR. NO MATTER THAT PRESIDENT NIXON HAD ORDERED EXTENSIVE TROOP WITHDRAWALS AND THAT CONGRESS HAD REPEALED THE RESOLUTION LAST DECEMBER.

THERE WAS EVIDENCE, TOO, OF SOME CONFUSION AMONG SOVIET PRESS WRITERS. MOSCOW RADIO REPORTED IN A DOMESTIC BROADCAST JUNE 17 THAT THE FBI WAS DILIGENTLY SEARCHING OUT THE CULPRIT WHO PASSED ON THE SECRET PAPERS.

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WASHINGTON CAPITAL NEWS SERVICE

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"EVEN PRESIDENT NIXON HAS COME UNDER SUSPICION," MOSCOW RADIO STATED FACTUALLY. "HE HAS IN HIS ARCHIVES ONE OF THE 15 EXISTING COPIES OF THE PENTAGON REPORT."

FOR THE VOICE OF AMERICA, THE U.S. GOVERNMENT'S MASSIVE, WORLDWIDE PROPAGANDA AND BROADCAST NEWS SERVICE, THE CHALLENGE QUICKLY BECAME AN EFFORT TO INFORM THE CURIOUS SOVIET LISTENER WITH AN UNDERSTANDABLE PICTURE OF WHAT WAS GOING ON.

TO DO THIS, RUSSIAN-SPEAKING EMPLOYEES OF "THE VOICE" BEGAN LISTENING MORE ATTENTIVELY THAN EVER TO MOSCOW RADIO'S REPORTS, TRYING TO GRASP THE MAJOR THEMES OF SOVIET REPORTING AS WELL AS THE ERRORS AND DISTORTIONS.

"WE TRIED TO EXPLAIN THE COMPLEXITIES OF THE THREE BRANCHES OF AMERICAN GOVERNMENT," ONE RUSSIAN-SPEAKING ANNOUNCER EXPLAINED IN AN INTERVIEW WITH UPI.

"WE PUT PARTICULAR EMPHASIS ON THE METICULOUS PROCEDURES OF THE COURTS, AND FOLLOWED THE PROCESS FROM THE FIRST ACTIONS BROUGHT BY THE EXECUTIVE BRANCH THROUGH THE FINAL RULING OF THE SUPREME COURT. THE TASK WAS COMPLICATED BY THE FACT THAT THE ORDINARY SOVIET CITIZEN DOES NOT HAVE A VERY READY GRASP OF AMERICAN REALITIES WHERE THE CONSTITUTION SETS UP CERTAIN BASIC RIGHTS, AND THE PRESS AND COURTS ARE INDEPENDENT FROM THE EXECUTIVE BRANCH OF GOVERNMENT."

THE VOICE OF AMERICA GAVE FULL, RUNNING COVERAGE TO DEVELOPMENTS AND THESE WERE BROADCAST AROUND THE WORLD IN ENGLISH, AND IN REGIONAL LANGUAGES SUCH AS RUSSIAN, CHINESE AND SCORES OF OTHERS.

THE FACTUAL NEWS REPORTS WERE SUPPLEMENTED BY A WIDE VARIETY OF COMMENTARIES AND ANALYSES. RUNNING THROUGH THESE EXPLANATORY PIECES WERE A VARIETY OF THEMES.

THESE THEMES WERE WOVEN INTO ANALYSES AND COMMENTARIES IN A FAIRLY SOPHISTICATED WAY, AND NEVER BY SIMPLE OR LOUD REPETITION. FOR EXAMPLE, WHEN THE SUPREME COURT HANDED DOWN ITS JULY 1 DECISION IN FAVOR OF THE NEWSPAPERS, THE VOICE BROADCAST DETAILED EXCERPTS OF THE OPINIONS PRESENTED BY BOTH THE CONCURRING AND THE DISSENTING JUSTICES. THE POINT CAME HOME CLEARLY THAT THE BURDEN OF PROOF FOR PRIOR RESTRAINT RESTED ON THE GOVERNMENT, AND THAT THE GOVERNMENT HAD FAILED TO PROVE ITS CASE.

EARLIER, ON JUNE 17, THE VOICE OF AMERICA SOUGHT TO EMPHASIZE THAT THE AMERICAN PRESS IS NOT CONTROLLED BY THE COUNTRY'S "RULING CIRCLES" BY QUOTING FROM WIDELY DIFFERING PRESS OPINIONS. THUS, THE VOICE TRANSMITTED EXCERPTS FROM THE SAN DIEGO UNION WHICH BACK THE NIXON ADMINISTRATION AND CASTIGATED THE NEW YORK TIMES, WHILE ALSO BROADCASTING THE OPINION OF THE DES MOINES REGISTER THAT NO HARM HAD BEEN DONE TO THE UNITED STATES THROUGH PUBLICATION OF THE DOCUMENTS.

THE VOICE ALSO MADE AMPLE USE OF FOREIGN PRESS COMMENTARY WHICH OCCASIONALLY MADE TELLING POINTS. THE VOICE, FOR EXAMPLE, CARRIED THE REMARKS OF SWITZERLAND'S NEUE ZUERICHER ZEITUNG ON JUNE 18 WHICH NOTED THAT ONLY IN AMERICA COULD SUCH A PRESS-GOVERNMENT DISPUTE ARISE WHERE PRESS FREEDOMS ARE DEEPLY ENGRAINED.

BUT PERHAPS THE MOST STRIKING COMMENT FOR THE SOVIET LISTENER -- SO USED TO BEING UNINFORMED ABOUT HIS GOVERNMENT'S DELIBERATIONS -- WAS THE COMMENTARY OF THE SPANISH NEWSPAPER VANGUARDIA ESPANOLA WHICH WAS TRANSMITTED ON JUNE 30.

THE NEWSPAPER SAID, AND THE VOICE TRANSMITTED, THAT THE U.S. PUBLIC WOULD HAVE A CHANCE TO EXAMINE ITS CONSCIENCE OVER THE VIETNAM WAR IN A LEGAL FASHION AND IN ACCORDANCE WITH THE CONSTITUTION AND THE DECLARATION OF INDEPENDENCE -- CONTRARY TO THE SITUATION IN THE SOVIET UNION WHERE THE PUBLIC "DOES NOT HAVE THE OPPORTUNITY TO CHECK UP ON THE GOVERNMENT'S ACTIONS."

ADV FOR AMS MON JULY 5 -

DP1033PED..



Joseph Alsop

On Revealing Secrets

On the eve of Pearl Harbor, one of the most vicious isolationists, Sen. Burton K. Wheeler, communicated to The Chicago Tribune the secret war plans of the United States. He had got them from a War Department opponent of President Roosevelt's policy, who had stolen the war plans.

The war plans were of course nothing but contingency plans. The Chicago Tribune nonetheless published them as proof of a secret plot to go to war behind the country's back. The Tribune's owner, the singularly arrogant Col. Robert R. McCormick, sanctimoniously explained that he was doing his duty as a patriot.

That one was rather trifling, however, compared to The Tribune's subsequent after-battle report on the great and decisive fight at Midway Island. Without saying so in plain language, this post-battle report made it quite clear that the United States had broken the Japanese Naval Code.

The sequel has never been correctly published to this day. Contrary to common belief, an indictment of The Chicago Tribune was sought after the report on Midway; and a sealed indictment was actually handed down. The failure of the Japanese intelligence blocked prosecution, however.

The Japanese intelligence in fact failed to spot, or at least to draw the obvious conclusion, from The Chicago Tribune story. The same code therefore remained in use. The government's suit was necessarily abandoned, for fear of remedying this gross error of the Japanese intelligence. As late as 1943, it was possible to shoot down the single aircraft carrying Admiral Yamamoto because the Japanese code was still being read.

It can be seen, then, why the rather pompous ghost of the late Col. McCormick is now walking again. To begin with, the pre-Pearl Harbor publication of the U.S. war plans, and the later revelation that the enemy's code had been broken, were in the minds of many when important amendments of the Espionage Act were passed in 1950.

The most relevant section of the act, as amended,

makes it a felony, punishable by 10 years in jail or a \$10,000 fine or both, to "communicate, deliver, transmit or cause to be communicated" any government "document, writing" and 11 other things such as photographs, plans and notes "relating to the national defense," of which "possession" is "unauthorized." This is in fact the law which President Nixon is now charged with enforcing.

Legally, the government lawyers can perceive no more than one difference between the act of the person who stole the U.S. war plans for Sen. Wheeler, and the act of Dr. Daniel Ellsberg, who stole the Pentagon documents and gave them to The New York Times. The unique difference is that the law has been made stricter in the interval.

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Legally, it has been ~~equally impossible~~ to perceive any but this one difference between Col. McCormick's decision to publish, and The Times decision to publish. The Times used exactly the same reasons as Col. McCormick, and all but reproduced the late colonel's peculiar tone when explaining its decision.

Morally, to be sure, there is a wide difference. War plans and broken enemy codes are in quite a different category, morally if not legally, from any collection of government documents, however huge, that has to do with the fairly remote past. Yet the language of the law seems plain enough, despite a declaration in another part of the act that there is no intent to infringe the freedom of the press.

Thus the real drama of the new stage, much argued inside the government, is whether the President will go all the way to enforce the law, which appears to apply just as much to the newspapers as to Dr. Ellsberg. While very sensibly holding that the government had gone too far in seeking an injunction against future publication, Associate Justice Byron White, for instance, remarked that "a newspaper, as well as others connected with the government, (is) vulnerable to prosecution under Section 793E."

To complicate the matter, there has been the widest difference in the ways

various newspapers have handled the stolen documents, both as to fairness of presentation of the material, and as to quantities of actual documents published in text. In the latter respect, The Times stands alone.

The quantity of "plain text" published in The Times is already so great that the government cryptographers now consider as compromised all the secret messages sent in the same period over the same types of coding machines. Such, then, are the main ingredients of the choice Mr. Nixon has yet to make: whether to proceed against Dr. Ellsberg alone, or Dr. Ellsberg and The Times, or other newspapers as well.

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MILTON VIORST

Press Freedom Battles Lie Ahead

If, on this 4th of July weekend, you're looking for an omen on the future of the republic, you probably can find one to suit your taste in the Supreme Court's decision on the right of the New York Times to publish the now famous documents on the Vietnam war.

It wasn't the court's most incisive piece of work. The justices obviously did a lot of arguing and came up with a ragged compromise. It provided a 6-3 ruling in the Times' favor, but no opinion of the court that carried the force of law.

Instead of the court's setting a clear precedent, each justice went off in his own direction to write an opinion, each of which has equal authority—or non-authority.

But, if nothing else, there is a richness of variety. So you can take your pick on which justice is right according to how you feel personally about the press, the First Amendment, the war, the Pentagon or the Nixon administration.

Given my own prejudices, I was glad Justice William Brennan challenged Chief Justice Warren Burger's contention that the case was decided too hastily.

Brennan argued that, on the contrary, the two weeks of injunction against the Times was an unjustifiable suspension of the First Amendment and that the case "may not be taken to indicate the propriety, in the future, of issuing temporary stays and restraining orders to block the publication of material sought to be suppressed by the government."

However, I found the best statement of the issue—because it had the ring, not just of principle, but of practicality—from Justice Potter Stewart, one of the more conservative members of the court. He wrote:

"In the governmental structure created by our Constitution, the executive is endowed with enormous power in the two related areas of national defense and international relations. This power, largely unchecked by the legislative and judicial branches, has been pressed to the very limit since

the advent of the nuclear age.

"In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon (this) executive policy and power may lie in an enlightened citizenry—in an informed and critical public opinion which alone can here protect the values of democratic government . . .

"Without an informed and free press, there cannot be an enlightened people."

Indeed, as Justice Thurgood Marshall pointed out, the Congress on two occasions in this century considered giving the president the authority to invoke prior censorship of information—and on both occasions explicitly rejected it as an excessive power.

Unable to allege a violation of the law by the Times, the government turned to the power inherent in its responsibility for foreign relations to request of the court the suppression of the Vietnam documents.

In its three-paragraph decision, the court said simply that the government had not met the "heavy burden of showing justification for the enforcement of such a restraint."

Marshall's opinion went a step further. "It is not for this court," he wrote, "to tinge itself into every breach perceived by some government official."

Yet Justice John Harlan, dissenting from the majority, stated a willingness to fill that breach. He argued that the court should leave to the secretary of state or the secretary of defense the determination of what material should be suppressed for reasons of national security.

He stated his support of the doctrine that "the president is the sole organ of the nation in its external relations" and insisted that the courts must apply to the president "the deference owing to an administrative agency."

He conceded to the courts only an exceedingly narrow power of review of presidential decisions on security questions.

Harlan's opinion carries particular significance because it sustains Justices Burger and Harry Blackmun, the Nixon appointees, who some believe are now laying in a conservative ideology for the Supreme Court of the coming decades.

Yes, even in vindicating the Times, the court had something for all Americans—and perhaps that's the way it should be on the July 4 weekend. But one message was clear: More bitter battles over the freedom of the press now lie ahead.

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W. Marshall

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House panel demands CBS film cuts

Another press freedom fight ahead — broadcasting rights

By RICHARD STARNES

Scriptwriter

Another epic constitutional battle over freedom of the press is likely in the wake of the bitterly controversial CBS documentary, "The Selling of the Pentagon."

The central issue is whether the First Amendment's guarantee of press freedom, on which the Supreme Court based its refusal to bar newspapers from publishing the top-secret "Pentagon papers," extends equally to television and radio and protects CBS from providing a congressional committee with materials relating to the documentary.

Principals in the dispute are:

- Chairman Harley Staggers, D-W.Va., of the House Commerce Committee, who won the support of the committee's majority Thursday to ask the House to cite CBS for contempt of Congress for refusing to supply it with the subpoenaed materials.

- Dr. Frank Stanton, outspoken president of CBS, who personally refused to yield to the subpoena and was named also in the proposed contempt citation.

The film, first broadcast last Feb. 23 and rebroadcast twice since, purported to reveal a huge Department of Defense propaganda machine apparently dedicated to enlarging and perpetuating the military establishment. This apparatus, according to the narration that accompanied the documentary, costs the taxpayers at least \$30 million a year. One independent estimate of \$130 million was cited.

Other alleged revelations in the film jarred the Pentagon and its partisans in Congress and in the administration. One episode showed a team of "traveling colonels" lecturing reserve officer and civilian audiences, championing U.S. participation in the war in Viet-

nam. This, a CBS commentary was at pains to point out, was in direct violation of Army regulations.

The documentary created a storm of controversy. Vice President Spiro Agnew was loud in his denunciation. So was Chairman Edward Hebert, D-La., of the House Armed Services Committee. He said the whole thing was an "un-American" attack on the nation's military establishment.

But the most detailed reply came from the Pentagon itself. Pentagon sources angrily charged that CBS had distorted hours of taped interviews, sometimes even transposing questions and answers, to produce what was essentially a false view of the Defense Department's information machine.

CBS tacitly conceded there was an enormous amount of raw footage that had not found its way into the finished print of "The Selling of the Pentagon." This set the stage for the next step in the controversy. It also introduced an occult word from the TV trade vocabulary into general usage: "outtakes." It means footage which is filmed but not broadcast. Normally the outtakes in a documentary would outweigh the finished film by as much as a hundredfold.

CRITICISM MOUNTS

Criticism of TV news broadcasting has grown in government circles in direct ratio to the enormous power of the medium. Altho Vice President Agnew has brought criticism of electronic journalism to its highest pollsh, complaints about allegedly unfair treatment are as old as television itself.

With the controversy over what the CBS outtakes did or did not reveal about the integrity of "The Selling of the Pentagon," critics of TV news practices thought they saw an opportunity to bring some discipline to the medium.

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The House Commerce Committee — which oversees the Federal Communications Act and thus the broadcast industry — had already been investigating CBS on two other counts: a 1966 documentary entitled "Hunger in America," which some critics charged presented a false picture of the subject, and the network's role in an abortive invasion of Haiti in 1966.

"The Selling at the Pentagon" was quickly added to the committee's agenda. Rep. Staggers promptly demanded that Dr. Stanton produce the "Selling of the Pentagon" outtakes so the committee could decide for itself whether the documentary had been edited in such a fashion that a slanted or false picture was presented.

STANTON BALKS

Dr. Stanton refused, asserting that to produce the outtakes would have a "chilling" effect on future news broadcasts and would be in violation of constitutional guarantees of freedom of the press. The committee issued a subpoena for the unseen films. And again Dr. Stanton refused to produce them.

The issue now will go to the House, which rarely refuses to support its committees when they seek to hold witnesses in contempt. Congressional sources think the House will reach a vote on the question by midmonth or soon after. If, as is expected, the House backs the Commerce Committee, the contempt citation will be forwarded to the Department of Justice for prosecution.

Thus the stage will be set for a legal battle that is expected ultimately to confront the U.S. Supreme Court with another momentous question dealing with the right of news media to present their product free of government interference.

Three cases regarding the inviolability of re-

porters' notes already are scheduled for argument before the high court next fall. Supporters of CBS claim to see an analogy between these cases and the outtakes sought by the committee. Committee sources dispute this view.

Rep. Staggers, reiterating his claim that he is not trying to censor CBS, said that because radio and television are licensed by the government to operate in the public interest they did not share in newspapers' freedom from government investigation.

"It might be good to clear the air," he said, "and show the American people that their elected representatives are trying to get at the truth."

"The issue is whether the American people have the right to know if they are being deceived by electronic media."

TAKE YEARS

While the case of CBS outtakes seems destined to drag on perhaps for years, informed sources believe that it eventually will face the Supreme Court with a question on the First Amendment as far-reaching as the one just decided in favor of the New York Times and the Washington Post.

Broadly put the question is: does the government, for all its undisputed right to regulate broadcasting, have the right to a network's raw news files in order to judge the objectivity of news broadcasts?

"If broadcasters must submit to government surveillance of news judgments," Dr. Stanton said in commenting on the committee's contempt citation, "broadcast journalism can never perform the independent and robust role which the Constitution intended for the American press in preserving freedom."

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'WE'RE HERE FOR YOUR SECRET FILES'



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DAVID LAWRENCE

Where Are the Red War Pap...

With all that has been said in Congress and written in the press about the "Pentagon study" on the Vietnam war, Lyndon B. Johnson — who was the chief executive for five years during the era covered by the documents — hasn't uttered a word in reply to the allegations of incompetence, deception and inefficiency which the report has conveyed to the public.

The next highest executive, Dean Rusk — who was secretary of State in the Johnson and Kennedy administrations — now has commented in an interview in Athens, Ga. He states he had no prior knowledge of the study, which he hopes will be made public some day. Apparently judging by what has appeared in print already, Rusk points out that the Pentagon report represents "only a fragment of the tons and tons of materials that are in the Defense Department, State Department and the White House, and it is clear that a lot of the material is not available to the fellows who wrote the report."

Rusk insists that, during the presidential campaign of 1964, Lyndon Johnson had no plans to bomb North Vietnam, although there were people on his staff who were working out all sorts of contingency projects. What has been published, unfortunately, does contain data which Rusk says will be helpful to Hanoi and Moscow. He adds:

"I think they will be very curious about some of the things that went on in our government . . . If we had comparable information about discussions in Hanoi or Moscow,

it would be invaluable to us."

The impression being conveyed to the American people is that the government operated with a great deal of internal confusion. The military services made many plans and recommendations which were not accepted, presumably because it was feared that the war might be broadened. Yet, despite every effort by the administration to hold down American involvement, the intensity of the fighting forced an increased participation on our part.

What is missing, of course, is knowledge of just what was happening on the Communist side — how much war materiel was being shipped in week by week to North Vietnam from the Soviet Union and Red China, how many planes were being made available, and what weapons were being supplied, along with military advisers and technicians. The American people will never know the extent of training the North Vietnamese army was given by Soviet and Red Chinese experts.

A lack of information throughout the war about just what Red China and the Soviet Union were doing to help the North Vietnamese and the Viet Cong become a stronger and stronger adversary made it difficult to plan the American side of the war strategy.

Maybe some day, too, more data will be obtainable as to the methods used by the Communists to get so much intelligence concerning the military plans and operations of the South Vietnamese and American governments. It is hard to believe that a big army with a

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great deal of equipment from the United States was necessary to bring North Vietnam to a realization that the war could not be won militarily.

Today, of course, the Communists feel buttressed by what they read in the press about the anti-war sentiment in the United States. To them, this undoubtedly means that the withdrawal of American forces is inevitable on terms that will give South Vietnam little or no chance in the future. In fact, there is every indication that the Hanoi government believes that not long after American troops are completely withdrawn, the Communists can take over South Vietnam.

The North Vietnamese and Viet Cong are insisting that there must be a "coalition" government in Saigon, but the United States has consistently refused to agree to any such idea. It remains to be seen whether the anti-war agitators in Congress will break down the determination of the administration.

If this happens, the American pullout of troops will amount to a surrender, and within a year or two South Vietnam will fall into the hands of the Communists, who then will have achieved their greatest victory in Southeast Asia. This would mean that the sacrifices made in Vietnam by American troops would have been in vain and that all the countries now protected by the Southeast Asia Treaty will be swept by fears that they might be the next victims of a Communist takeover.

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Little in Files Seen Harmful By Macomber

United Press International
William B. Macomber Jr.,
Deputy Under Secretary of
State, said yesterday only "a
very small percentage" of the
Pentagon papers could be
damaging if disclosed, and
newspapers largely have re-
frained from publishing those
sections.

Macomber said only The
New York Times "may have"
printed some sensitive mate-
rial.

The Times was first to pub-
lish accounts along with some
texts from the secret study of
the origins of the Vietnam
war. The Washington Post was
next, followed by about a
score of other newspapers.

Macomber said he hoped
one result of the disclosure of
the Pentagon papers would be
that "the government will do a
better job of declassifying the
things that have become his-
tory."

Macomber was interviewed
on the NBC-TV Today show.

Macomber said fewer than
1,000 pages of the 47-volume
report could be considered so
sensitive they "could do real
damage." He said those papers
discussed "certain negotiating
efforts, intelligence capabili-
ties, and certain military
plans."

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(CIA)

WASHINGTON--SEPARATE BILLS TO GIVE CONGRESS MORE CONTROL OVER THE SUPER-SECRET CENTRAL INTELLIGENCE AGENCY WERE INTRODUCED TODAY BY SENS. JOHN SHERMAN COOPER, R-KY., AND GEORGE MCGOVERN, D-S.D.

COOPER PROPOSED AN AMENDMENT TO THE 1947 ACT THAT CREATED THE CIA TO REQUIRE CONGRESSIONAL COMMITTEES TO GIVE CONGRESSIONAL COMMITTEES ACCESS TO CIA REPORTS. THE CURRENT LAW, WHILE NOT FORBIDDING CONGRESSIONAL ACCESS TO SUCH DOCUMENTS, MAKES NO PROVISION FOR IT.

MCGOVERN PROPOSED LEGISLATION TO REQUIRE ALL CIA EXPENDITURES AND APPROPRIATIONS TO APPEAR AS A SINGLE LINE ITEM IN THE BUDGET. THE EXPENDITURES ARE NOW SECRET, DISGUISED IN VARIOUS AGENCY APPROPRIATIONS.

COOPER'S PROPOSAL, IN ADDITION TO OPENING UP CIA REPORTS TO CONGRESS, WOULD REQUIRE SECURITY CLEARANCES FOR MEMBERS AND THEIR STAFFS BEFORE THEY COULD VIEW THE INFORMATION.

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Tom Braden

Ruling Far From Victory for Pr

THE SUPREME COURT has ruled—by a surprisingly narrow margin—that the government cannot say, "You may not speak." But the court is a long way from saying that the government cannot punish you if you do.

The Times-Post ruling was far from a victory for the First Amendment. It seems indeed to place the First Amendment in "clear and present danger."

The opinion of Mr. Justices White, in which Mr. Justice Stewart concurred, is crucial. It came down on the same side as the opinions of Justices Black and Douglas, but it gave their argument cold comfort. Neither White nor Stewart could bring himself to muzzle the press. But they seemed anxious to point out that the press might be punished for not muzzling itself.

Their view will offer comfort to Attorney General Mitchell as he considers the possibility of taking his revenge. Indeed, Mr. Justice White seemed to take pleasure in pointing out the various laws under which

Mr. Mitchell might bring criminal action against the newspapers. "I am not, of course, saying that either of these newspapers has committed a crime . . .", he wrote. "That matter must await resolution in the context of a criminal proceeding . . ."

The White-Stewart view was the swing opinion, and it was a set-back to law school First Amendment experts. Yale's professor Thomas I. Emerson once remarked the "gradual progress towards acceptance of the view that the First Amendment affords complete protection to all forms of expression."

HE WILL HAVE to re-define the word, "gradual." Only Justices Black and Douglas demonstrated his view of "progress." Black stated the case for absolutism: "The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our republic."

Mr. Justice Brennan disagreed: "Only governmental allegation and proof that publication must inevitably, directly and immediately cause the occurrence of an

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event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order."

This caveat is crucial and places Brennan some distance apart from Black and Douglas. Therefore, the lineup on the court is really six to two against absolute right to free expression. (Mr. Justice Marshall did not confront the issue, choosing instead to argue that the power of the executive branch did not extend to injunction.)

SO THE LANGUAGE of the First Amendment, "Congress shall make no law . . . abridging the freedom of speech or of the press" appears to be far less clear today than it was when James Madison wrote it. Prof. Alexander Meiklejohn, who taught Emerson and influenced Black, spent most of his life trying to demonstrate that the absolute right of free expression was essential to self-government and to the constant social change without which a modern nation could not survive.

But the Supreme Court has never fully agreed. Until 1925, the court upheld convictions for those who

advocated — not attempted, but advocated — violent overthrow of the government. It was not until that year that a new doctrine, enunciated in a famous dissent by Oliver Wendell Holmes, began to emerge.

Holmes suggested that only "clear and present danger" constituted grounds for punishing speech. For a time, this test, to which now only Mr. Justice Brennan seems to adhere, became the norm. But in the 1950s, Justices Frankfurter and Vinson began to substitute the doctrine of "balancing" the interest of the government in national security against the value of free expression.

THIS "BALANCE" doctrine seems a fair definition of the yardstick which Justices White and Stewart applied in the Times-Post decision.

They could not bring themselves to "balance" in favor of the government on the issue of prior restraint. But their opinions, along with the arguments of the three dissenters and of Mr. Justice Brennan serve notice that the court is not ready to accept the First Amendment as meaning what its words say it means.

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A Deadline for Declassification?

By Henry Owen

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CASE TWO:
On December 8,
1941, most
Americans were
fairly clear that
Hirohito had at-
tacked a peace-
ful America out
of the blue. Af-
ter the war
smoldering hos-
tility toward
President Roosevelt exploded in a burst
of revisionist commentary, which sug-
gested that he had tempted and provoked
Japan into firing the first shot. The U.S.
Government, in a burst of candor, gave two
eminent scholars—William Langer and Ev-
erett Gleason—the run of its archives and
invited them to form and write their own
view. Phase III, which began with their two-
volume work in the early 1950s, has been re-
flected in a succession of scholarly studies
ever since. These studies have reached vary-

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ing conclusions, but no one who reads all of them is likely to return to the simplistic theories of the 1940s. The failures of last-minute U.S. and Japanese efforts to avert war are, as John Toland points out in his recent work, too tragic and complicated a business to be explained by seeking out heroes and villains.

On Vietnam, we are now in Phase II. Secret documents have been revealed; wartime leaders are being discredited. But the revealed documents are inevitably a partial record. They do not include White House files; and they do not indicate either the context in which, or the tactical purposes for which, the memoranda they cite were written. They cannot fully reflect the doubts and torments of officials reaching for decision—which are, by the very nature of the government's operations, rarely committed to paper. The authors who analyzed these papers were not able to conduct interviews with the participants; as indicated in these volumes' preface, they sometimes lacked the research experience required to assess evidence which was necessarily, as a Washington Post editorial has pointed out, neither complete nor balanced. These are some of

the reasons why such men as George Ball and Averell Harriman have warned against trying to draw sweeping conclusions from these documents.

One remedy was suggested by three noted historians before the current storm broke. In 1969 Professor Ernest May of Harvard proposed that all classified government records, except for those few whose disclosures would directly, surely, and powerfully prejudice national security, be opened after a fixed period to qualified professional historians. Professor James McGregor Burns of Williams followed with a similar, if more general, proposal and suggested that the waiting period be fixed at eight years. In light of recent events, this period might well be shortened. The proposal was promptly endorsed by Professor Langer, who pointed out that "systematic declassification is patently impossible: the records are so voluminous that it would take large teams of highly qualified personnel years to complete the assignment."

Professor May had in mind that a group of these historians, based in universities, would then launch a major effort to produce scholarly histories of U.S. postwar

foreign policy

— perhaps under a foundation grant, which might be managed by an appropriate professional association or by a group of these associations. Outlining the advantages of such a historical program in persuasive terms, Professor May concluded: "Policy-makers and their staffs would possess more reliable knowledge about events which they use as trend gauges and action indicators . . . Legislators, journalists, and others commenting on current actions would have less excuse for basing comparisons on legend rather than reality . . .

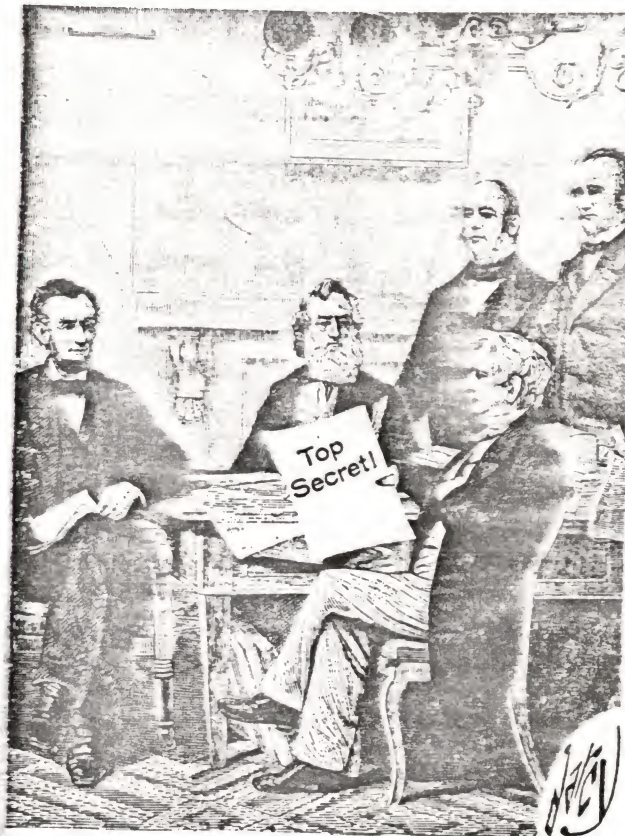
and students

would leave the classroom with somewhat more awareness than now seems common that the world is a complicated place and that the color of truth is often gray."

At the time these professors' proposals were made, they attracted scant attention. In light of current events, they warrant serious exploration. The President might appoint a mixed commission of eminent American historians and government officials to study the matter and report back to him with specific recommendations. This would be a different operation from the inter-agency study on declassification which is already underway in the U.S. Government.

In the meantime, private studies can make a modest contribution in pointing the way. Leslie Gelb, who coordinated the compilation of Pentagon documents, is embarked on a three-year analytical history for the Brookings Institution of how five successive U.S. administrations perceived and acted on U.S. interests in Indochina from 1940 to 1965. His object is not to figure out who struck whom and why, but to show the inter-relation between official decisions and the international and domestic environment in which they were taken. His research is based on public sources; the first published results, published recently in Foreign Policy and the "Outlook" section of The Washington Post, suggest that his conclusions will be both more balanced and perceptive than those now being widely drawn from the Pentagon documents often by people who haven't even read them, but have heard of them at second or third hand.

Whatever may be the verdict of history in Vietnam, one thing is sure: It will differ from many of the verdicts now being pronounced with such speed and enthusiasm on the basis of a scattered and incomplete returns.



Darcy. copyright Newsday.

'Abe, I Got A Great Idea For Fooling All Of
The People All Of The Time. . .'

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Rowland Evans and Robert Novak

A Tet Memo From Ellsberg



THE FLAWED VISION of Daniel Ellsberg in viewing the Vietnam war, a failing that was to have profound implications for his country, was laid bare in a private memorandum he wrote for the Pentagon on Feb. 28, 1968, spectacularly misinterpreting the just completed Communist Tet offensive.

Ellsberg, then a Vietnam expert for the Rand Corp. think tank, had been asked to interpret the bloody Tet offensive for the Defense Department's Office of International Security Affairs (ISA). His memorandum was apocalyptic: "I think that the war is over" — Communists taking over the countryside, the South Vietnamese government and army deteriorating, a rapid renewal of the Communist offensive. "Two months from now . . . things are going to get much worse," he said, precluding any possibility for improvement.

No prophecy could have been more false. In truth, the Tet offensive was the Communist high-water mark, triggering a three-year decline in their Vietnamese strength (which may now be ending). But Ellsberg, exasperated with Saigon's corrupt government and its army, could see in Tet only the vindication of his own warnings. It was a view

widely shared in ISA, whose staffers wrote the Pentagon Papers.

Thus, the spectacular mistakes of Ellsberg's 1968 memo transcend the personal. His flawed vision is the flawed history of the Pentagon Papers. It is the all-is-lost syndrome that deeply influenced U.S. policy in the months after the Tet offensive and finally led to Ellsberg's disclosure of the Pentagon Papers.

FOR THESE REASONS, Ellsberg's errors about Tet are worthy of examination. Herewith are some prophecies he sent the Pentagon along with the actual outcome of events:

Ellsberg prophecy No. 1: The Communist Tet offensive of Jan. 29-Feb. 29 was a prelude to "the takeover of the countryside" by the Vietcong, "inexorably sucking" South Vietnamese and U.S. forces "toward the environs of the towns and cities, away from the hamlets and outlying regions."

The actual outcome: by their desperate Tet attacks, the Communists depleted their forces in the countryside and have not adequately rebuilt them since.

Ellsberg prophecy No. 2: The Vietcong will be drafting ever more recruits, whereas South Vietnamese armed forces "will probably

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be considerably smaller." By April 1, Saigon's force "will be, at most, 75-80 per cent of its actual strength in December, 1967, and quite possibly closer to 60 per cent" because of heavy desertions.

The actual outcome: Saigon forces increased by 122,000 the next six months, finally surpassing one million. In contrast, Vietcong recruiting in the countryside was never the same, and the Communist war effort was increasingly carried by regulars from the North.

Ellsberg prophecy No. 3: "It is the death of pacification"—Communist control of South Vietnam will steadily increase, never receding. By April 1, "U.S. sub-sector teams will be withdrawn from a number of districts, and a number of province towns will be under siege. Some will have fallen." Some 400,000 U.S. troops would be needed to prevent this.

The actual outcome: Far from U.S. teams being withdrawn or province towns falling, Communist control of the countryside steadily receded, without any increase in U.S. troops.

Ellsberg prophecy No. 4: "The best guess is that the VC (Vietcong) cadres are busy learning lessons from the initial attacks on how to do better next month." By early April, there will be an

other round of heavy attacks, including renewed pressure of the U.S. Marine base at Khe Sanh.

The actual outcome: The Vietcong were hopelessly decimated by the Tet offensive. Not since then have they even contemplated an offensive comparable to Tet. By April 1, the relief of Khe Sanh had begun.

MOREOVER, ELLSBERG completely missed this point: By their brutal assault on villages, the Communists irrevocably diminished their own political base in South Vietnam. While Ellsberg's memo predicted post-Tet tensions would result in U.S. air and artillery attacks on South Vietnamese villages, U.S. sensitivity about such politically self-defeating tactics has greatly increased since then.

Flawed though Ellsberg's judgment was, however, this mentality—in high places, in and out of government—helped erode U.S. support of the war and undermine a political consensus at home. Now, in the confusion wrought by publication of the Pentagon Papers, the mistaken Dr. Ellsberg is apotheosized while those who correctly interpreted Tet as a calamitous Communist setback are in disgrace.

WILLIAM F. BUCKLEY JR. H-16

Why Were the Courts Stampeded?

Let's face it, Justice Harry A. Blackmun made a very telling point about the New York Times in his dissenting opinion. The paper had taken to using the argument of time pretty much as it served its convenience. Sometimes it gave the impression that every second counted. Other times, that, what the hell, we are dealing in matters that are ancient history.

Justice Blackmun remarked the irony that the Times took three months to prepare its handling of the Pentagon papers. Then, when the Times fired its first shot on a Sunday morning, the Justice Department, the following day at noon, sent a telegram to the Times announcing that it would seek an injunction against continued publication of the series.

★

The Times was apparently outraged at (a.) the length of time the Justice Department took in communicating its position (why hadn't Marjorie Mitchell called the Times the evening before?), and (b.) at the delay, caused by the lower court's restraining order, in making the series available to the public. In other words, if the Times, having come into possession of the documents early in March, could wait until the middle of June to publish the papers, then why shouldn't the courts have been given a little time to ponder whether the series contained information the release of which might be gravely prejudicial to the national interest?

Under the circumstances, Blackmun concluded, the courts, under the synthetic pressure of the situation, had

been stampeded into giving opinions which took only cursory account of the factual situation.

The trouble with that line of reasoning is that it finally serves to make the Constitution of the United States an incoherent document. "The First Amendment," wrote Blackmun, "after all, is only one part of an entire Constitution. Article II of the great document vests in the executive branch primary power over the conduct of foreign affairs, and places in that branch the responsibility for the nation's safety. Each provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions."

What Blackmun wanted, the majority of the court denied: Namely, that the lower courts should take the time thoroughly to review the contending positions.

★

On the one hand there was the Justice Department, insisting that the revelations in store for us would damage the national security. On the other hand, the Times et al insisting (a.) that it was by no means obvious that any such thing would happen and (b.) that it would surely damage the national security if the government exercised the right to restrain the press.

Accordingly, said Blackmun, we are left pretty much at the mercy of the discretion of the newspaper publishers, in this case the Times and the Washington Post.

"I strongly urge," said

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Blackmun, "and sincerely hope, that these two newspapers will be fully aware of their ultimate responsibilities to the United States of America."

It is a thin lifeline. Not because there is any reason to suppose that the publishers of these papers desire anything less than the best for America, but because we are in fact asked to rely on the final authority of two individuals, Arthur Ochs Sulzberger and Katharine Graham, who came by dynastic succession to their authority.

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Every now and then, on a fixed schedule, we are given the opportunity to pass judgment on the work of our political representatives.

We are not given such power over the Times and the Post, nor should anyone aspire to have such power. But, in fact, the publishers of these papers are exercising very grave responsibilities indeed, as Judge Malcolm R. Wilkey said in his dissent in the Washington Post case. Specifically, the papers were engaged in releasing documents which "could clearly result in great harm to the nation," for instance "the death of soldiers, and destruction of alliances, the greatly increased difficulty of negotiation with our enemies, the inability of our diplomats to negotiate."

This awesome roster Blackmun repeated, and closed: "To which list I might add the factors of prolongation of the war and of further delay in the freeing of United States prisoners." A high price to pay if we are to pay it, for one scoop, and one stampeded decision.

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UPI-66

(VIET PAPERS)

ST. LOUIS--ELLSWORTH BUNKER, AMBASSADOR TO SAIGON, SAID IN MID-1967 THE UNITED STATES COULD WIN THE VIETNAM WAR "BY PATIENT, CONTINUED, AND CONCERTED EFFORTS," ACCORDING TO REPORTS THE STS. LOUIS POST-DISPATCH SAID TUESDAY CAME FROM SECRET PENTAGON PAPERS.

THE DOCUMENTS PUBLISHED BY THE NEWSPAPER QUOTED FROM A MEMORANDUM FROM BUNKER WHICH REPORTEDLY OUTLINED A "BLUEPRINT FOR VIETNAM" WHICH, HE SAID, "CAN DEFEAT THE ENEMY."

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WASHINGTON--THE NIXON ADMINISTRATION HAS ORDERED A WHOLESALE OUTBACK IN THE NUMBER OF GOVERNMENT EMPLOYEES WITH TOP SECRET CLEARANCES, THE WASHINGTON POST REPORTED TODAY.

IN A CONFIDENTIAL WHITE HOUSE MEMORANDUM, BRIG. GEN. ALEXANDER M. HAIG JR., DEPUTY ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS, ASKED ALL GOVERNMENT AGENCIES TO SUBMIT BY NOON SATURDAY THE NUMBER OF PERSONS AUTHORIZED TO READ TOP SECRET MATERIAL, THE POST SAID.

PRIVATE CONTRACTORS AND CONSULTANTS AS WELL AS FEDERAL EMPLOYEES WOULD BE AFFECTED BY THE MOVE. EVEN THE WHITE HOUSE WILL HAVE TO SUBMIT A LIST, THE POST SAID.

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NEW YORK--MADAME NGO DINH NHU, WHOSE HUSBAND WAS KILLED DURING THE SAME COUP IN WHICH SOUTH VIETNAMESE PRESIDENT NGO DINH DIEM WAS SLAIN IN 1963, SAID TUESDAY THE U.S. GAVE ITS TACIT APPROVAL TO THE PLOT.

MADAME NHU WHO WAS VISITING THE U.S. WHEN THE SLAYINGS OCCURRED, SAID THE U.S. BEGAN A MOVE TO SUPPRESS THE PRESIDENTIAL FAMILY AS EARLY AS FEB. 27, 1972, AND BOMBED, OR DIRECTED THE BOMBING, OF THE SOUTH VIETNAMESE PRESIDENTIAL PALACE DURING THE 1963 COUP.

SHE MADE HER REMARKS IN A TELEVISION INTERVIEW TAPED IN PARIS AND SHOWN HERE ON NBC'S FIRST TUESDAY PROGRAM.

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WASHINGTON CAPITAL NEWS SERVICE

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AUSTIN, TEX.--WALT ROSTOW, FORMER PRESIDENT JOHNSON'S SPECIAL ASSISTANT FOR SOUTHEAST ASIAN AFFAIRS, SAID TUESDAY THE NEW YORK TIMES HAD MISLED THE PUBLIC IN ITS HANDLING OF THE PUBLICATION OF THE PENTAGON STUDY OF THE VIETNAM WAR.

"IT IS AN UNEVEN REPORT BASED ON PARTIAL EVIDENCE AND LACKING THE MOST CRITICAL EVIDENCE -- THAT IS THE PRESIDENT'S MIND, HIS CONSULTATIONS WITH HIS LEADING ADVISORS AND HIS CONSULTATIONS WITH THE CONGRESSIONAL LEADERSHIP," ROSTOW SAID IN AN INTERVIEW WITH THE DAILY TEXAN, A UNIVERSITY OF TEXAS STUDENT NEWSPAPER.

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NEW YORK--FORMER U.S. SUPREME COURT JUSTICE TOM C. CLARK SAYS NEWSPAPERS SHOULD BE ALLOWED TO PRINT DOCUMENTS THE GOVERNMENT CLASSIFIES AS SECRET AS LONG AS MAKING THEM PUBLIC WOULD NOT ACTUALLY DESTROY THE STATE.

IN AN INTERVIEW WITH UPI, CLARK SAID TUESDAY HE FAVORED SECRECY ONLY "IF THE NECESSITY OF THE STATE WERE SO GREAT IT WOULD DESTROY THE STATE TO MAKE THEM PUBLIC."

OTHERWISE, HE SAID, "THE RIGHT OF THE INDIVIDUAL -- IN THIS CASE THE FOURTH ESTATE -- SHOULD PREVAIL."

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PI-108

(CBS)

WASHINGTON--THE FREEDOM OF INFORMATION COMMITTEE OF SIGMA DELTA CHI TODAY URGED THE HOUSE TO KILL A CONTEMPT CITATION PROPOSED AGAINST THE COLUMBIA BROADCASTING SYSTEM AND THE PRESIDENT, FRANK STANTON, BY THE HOUSE COMMERCE COMMITTEE.

THE COMMITTEE VOTED TO CITE STANTON FOR HIS REFUSAL TO HAND OVER "OUTTAKES"--UNUSED FILM--FROM PREPARATION OF ITS CONTROVERSIAL TELEVISION DOCUMENTARY "THE SELLING OF THE PENTAGON."

THE PROFESSIONAL JOURNALISM GROUP SAID IN A LETTER TO HOUSE MEMBERS THAT APPROVAL OF THE CITATION "WOULD BE A SEVERE BLOW TO OUR CHERISHED, CONSTITUTIONALLY GUARANTEED FREEDOM OF THE PRESS, OF WHICH BROADCAST JOURNALISM IS AN INTEGRAL PART."

THE LETTER ADDED: SUCH ACTION, ENDORSING EFFORTS OF GOVERNMENTAL OFFICIALS TO SNOOP INTO NON-BROADCAST MATERIAL, WOULD SERVE TO INTIMIDATE AND HARASS ALL NEWSMEN IN THE FUTURE."

"FISHING EXPEDITIONS SUCH AS THE ONE UNDERTAKNE BY THE COMMERCE COMMITTEE MUST BE STOPPED IF CONSTITUTIONAL LIBERTIES ARE TO BE PRESERVED."

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UPI-139

ADD 1 CBS, WASHINGTON (UPI-108)

WARNING OF TELEVISION'S CAPACITY TO MANIPULATE ELECTIONS, REP. HARLEY O. STAGGERS, D-VA., TODAY URGED THE HOUSE TO APPROVE CONTEMPT-OF-CONGRESS CHARGES AGAINST STANTON AND THE NETWORK.

STAGGERS WARNED IN A LONG LETTER TO HOUSE MEMBERS AND A HARD HITTING HOUSE SPEECH THAT CBS' REFUSAL TO HONOR A SUBPOENA FOR THE FILM COULD PREVENT ENFORCEMENT OF "ANY LAWS CONGRESS MIGHT ENACT DIRECTED AGAINST CALCULATED MANIPULATION OF THE NEWS."

A VOTE ON THE UNPRECEDENTED ATTEMPT TO CITE A NETWORK FOR CONTEMPT IS EXPECTED NEXT WEEK--PROBABLY TUESDAY. APPROVAL OF THE CITATION COULD PROMPT JUSTICE DEPARTMENT PROSECUTION AND MAY EVENTUALLY END UP IN THE U. S. SUPREME COURT.

IN A 2,700 WORD LETTER AND STATEMENT TO ALL HOUSE MEMBERS, STAGGERS, WHO IS CHAIRMAN OF THE COMMERCE COMMITTEE, SAID THE "AMERICAN VIEWING PUBLIC" BASES ITS VOTES ON INFORMATION IT OBTAINS FROM ITS "MOST PROMINENT NEWS SOURCE--THE TV SET.

"THE RAW NAKED POWER TO MANIPULATE BY GROSS FABRICATION THE INPUT DATA IS THE POWER TO MANIPULATE, HOWEVER WELL INTENTIONED, THE DECISION-MAKING PROCESS OF THE AMERICAN ELECTORATE."

STAGGERS SAID HIS COMMERCE COMMITTEE HAS THE RESPONSIBILITY "TO ANSWER THIS DIRECT ATTACK UPON ITS RIGHT TO INVESTIGATE FOR THE PURPOSE OF LEGISLATION. BY ITS CONTEMPT RESOLUTION OF JULY 1, THE COMMITTEE HAS MADE CLEAR ITS INTENTION TO MEET THIS CALCULATED AFFRONT."

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UPI-141

(VIET PAPERS)

WASHINGTON--SENS. ROBERT C. BYRD, D-W. VA., AND HARRY F. BYRD JR., D-VA., CALLED TODAY FOR PROMPT AND FULL PROSECUTION OF THOSE WHO LEAKED THE PENTAGON PAPERS TO THE PRESS.

"... PROMPT AND VIGOROUS AND SUCCESSFUL PROSECUTION OF EVERY PERSON EMPLOYED IN A SENSITIVE GOVERNMENT POSITION, WHO ARROGANTLY TAKES UPON HIMSELF THE POWER TO EXPOSE POLICIES WITH WHICH HE IS IN PERSONAL DISAGREEMENT, IS ABSOLUTELY INDISPENSABLE," ROBERT BYRD, THE ASSISTANT MAJORITY LEADER, TOLD THE SENATE.

"EVERY PERSON HAS A RIGHT TO DISSENT; BUT NO PERSON, HAVING TAKEN ON RESPONSIBILITIES TO HIS GOVERNMENT, SHOULD BE ALLOWED TO CARRY THAT DISSENT TO LEVELS WHICH BETRAY VITAL SECRETS AND VIOLATE LAWS AGAINST ESPIONAGE."

~~BYRD SAID UNWARRANTED SECRECY AND THE FAILURE TO INFORM THE PUBLIC AN~~
~~WEAK~~

BYRD SAID UNWARRANTED SECRECY AND THE FAILURE TO INFORM THE PUBLIC AND CONGRESS HAS "SERIOUSLY WEAKENED THE CREDIBILITY OF THE UNITED STATES GOVERNMENT," BUT IT WAS "IMPORTANT THAT THE PERSON OR PERSONS WHO STOLE THE DOCUMENTS BE PROSECUTED TO THE FULL EXTENT OF THE LAW."

AND THE VIRGINIAN SAID THE PRESS SHOULD VIEW THE SUPREME COURT'S DECISION NOT TO BAR PUBLICATION "AS SOMETHING MORE THAN A CAUSE FOR CELEBRATION" BUT AS A MANDATE TO SHARPEN ITS OWN SENSE OF RESPONSIBILITY ON NATIONAL SECURITY MATTERS.

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Fund Is Started To Aid Ellsberg

LOS ANGELES (AP) — Describing Daniel Ellsberg as "a true patriot," a Los Angeles business group has announced establishment of a legal defense fund for the former Rand Corp. scientist and any others accused in the leak of secret Pentagon papers on Vietnam.

Albert R. Appleby, chairman of the local chapter of the Business Executives Move for Vietnam Peace, said yesterday the organization will seek donations from opponents of the Vietnam war.

A federal grand jury in Los Angeles has indicted Ellsberg on charges of unauthorized possession of the 47-volume Defense Department study and the Justice Department has said others may be prosecuted.

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ARTHUR HOPPE

Shaking Up the National Stupidity

The Piney Woods (S.D.) Argus-Leader has published still another segment of the Pentagon papers showing that America's initial involvement in Vietnam was due to a misunderstanding.

According to the story, President Eisenhower was making a nine-iron shot on the third fairway at Burning Tree Country Club shortly after the fall of Dien Bien Phu.

"We've got trouble in Indochina, sir!" cried an aide, rushing up in the middle of the President's downswing.

The President, thinking the aide had said, "Indiana," replied irritably, "Send somebody to handle it," and gloomily watched his ball skid into a bunker off the 14th green.

Pvt. Slocum N. Smeed was thus dispatched to Vietnam to offer the victorious Ho Chi Minh any military advice he might need. Unfortunately, the Pentagon Travel Bureau bought Pvt. Smeed a ticket to Saigon instead of Hanoi, figuring one place in Vietnam was as good as another.

Thus was our sacred commitment to South Vietnam born.

On publication of the story, the Justice Department immediately hauled the Argus-Leader into Piney Woods Justice Court. As the Department was now pursuing injunctions against 673 newspapers, all it could spare for the Piney Woods case was young Asst. Associate Deputy Prosecutor

Horatio Higgenbottom, who had been hired only the day before.

"Publication of any more stories like this by the Argus-Leader will gravely endanger national security," young Higgenbottom grimly told Piney Woods Justice of the Peace Grover Grommet.

"Why?" inquired Justice Grommet.

"Frankly," said young Higgenbottom, scratching his head, "I don't rightly know. They're so busy in Washington, they forgot to tell me."

"Well, now, son, I been reading these here secret Pentagon documents in the papers," said the old justice. "Seems like all they show is how every President, Cabinet member, ambassador, general, admiral and whatnot involved made a danged fool of himself time and time again. 'Tain't a question of secrecy. It's a question of stupidity."

"By George, you're right, sir!" cried the young prosecutor happily. "You've got to stop the publication of these documents revealing the inner workings of our government. It endangers the feeling of security of every American to realize his leaders are even more stupid, mixed up, self-deluding and self-serving than he is."

"Well, now," said the justice thoughtfully, "I can't argue with that."

So it was that young Higgenbottom rushed back to Wash-

ington triumphantly waving the injunction to his superiors. He was immediately promoted to special assistant associate deputy prosecutor and given two secretaries, a carpet, a water carafe and \$19.65 more a month.

"I'm glad there's someone in this department," said the attorney general, clapping him on the back, "smart enough to sum up at last the government's case against the press."

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Not Only the President's

National Security: The Public's Affair

By Stephen S. Rosenfeld

THE Pentagon papers illuminate decisions of the past but they also throw light ahead on decisions of the future. Their "lessons" are not so much specific instructions as general cautions, but from them and from the whole process of national self-searching which they climax and propel on, we perhaps can learn better how to avoid more "Vietnams."

It makes a difference right off how you define "Vietnam"—as an instance of conspicuous failure of American foreign policy or as a particular misuse of power. If your answer is the former, then the "lessons" of the Pentagon papers are very cynical and unhelpful: don't fail, or don't undertake any project unless there is a demonstrable difference between winning and losing and you are sure of winning and if you lose someone else will take the rap.

If you define "Vietnam" as a particular misuse of power, then you are on the right track, but it has a fork. Down one path goes Dean Rusk, a man of blinding fidelity to his own values, who very bravely acknowledged on TV that personally he had underestimated the persistence and tenacity of the North Vietnamese. That is, he confessed to a colossal error of judgment. A moment's reflection makes plain, however, that it is impossible to make foreign policy (or newspaper articles) proof against errors of individual judgment. Humans are human, it's as simple as that.

The argument of Leslie Gelb, editor of the Pentagon papers, that the fatal flaw lay in the lack of systematic questioning of Vietnam's importance to the United States within the government is more ambitious but nonetheless lies essentially on the Dean Rusk path. As the then-policymakers surely would contend, they questioned basic assumptions all the time: on that basis they decided Vietnam was important, a crucial test of American will. Some of us may now think they were wrong. But unless one chooses to be dogmatic or moralistic about it, that retrospective judgment on the policymakers, like their own contemporary judgment on Vietnam, is not beyond debate.

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W. J. Rusk

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MR. GELB'S argument, however, does open up what I suspect is the heart of the matter. He says the problem lay in a certain flaw in the decision-making process inside the government. This is a proposition bound to be congenial to government officials and others who have come to accept the notion that the making of national security policy is properly a matter left to the expert knowledge and extra information of government officials. But to journalists in their role as representatives of the public, and to others who may have been convinced by our experience in Vietnam that national security is too important to be left to the national security apparatus, it is not a congenial proposition at all.

One hopes that the government will explore ways to improve its own internal procedures, just as one hopes that only people of good judgment will rise to positions of influence inside the government. But a more reliable promise of wise policy, I would argue, arises from recognition that Vietnam exposed an institutional flaw, an institutional rather than a personal misuse of power.

By conducting their deliberations and operations in secret and by refusing to share with the public the reservations they attached to their policies and the anxieties they nursed about their success, the policy-makers not only deprived the public of the true story as they saw it—this is bad enough and it has been widely noted. They deprived themselves of a feedback from the public that might—who knows—have put an effective chock behind the wheels of American policy as it roared into the sixties virtually out of control.

The indicated remedy, then, is institutional change. This is not to deny the need for a greater vigilance on the part of the people and their representatives in office and in the press than existed in 1961-63-65. But by public demand and if necessary by legislation, the Executive branch must be required to share some part of the special information and to surrender some part of the initiative which it now commands in the conduct of foreign affairs.

What part? Share and surrender how? To what bodies or persons? On what schedule? These are the important questions; some of them are already being treated by Senators Fulbright, Javits, Cooper and others. Certainly any broad congressional inquiry into the Pentagon papers ought to end up confronting them head on.

IT REMAINS to consider the insidious defense of American war policy put forth most elegantly by The Economist (June 26): the publics and especially the "liberal intelligentsia" in Western democracies can seldom be brought to recognize foreign perils and the only way to save them from themselves is for their leaders to take them into war "crabwise, eyes averted, hand over mouth."

The appropriate rejoinder, I think, is that at this point not many Americans of any kind retain the degree of confidence in presidential omniscience that must underlie any such blanket grant of authority to the President, any President, in matters of war and peace. Our emphasis must be not on the motives or wisdom of our leaders—all honorable and able men, we must assume—but on the manner in which they exercise power. Isn't this the real lesson of the Pentagon papers?

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(ELLSBERG)

WASHINGTON--DANIEL ELLSBERG, THE ADMITTED SOURCE OF THE LEAK OF SECRET PENTAGON PAPERS TO NEWSMEN, SAID TODAY THE JOINT CHIEFS OF STAFF WITHHELD A VITAL REPORT ON THE 1964 TONKIN GULF INCIDENTS FROM THEN DEFENSE SECRETARY ROBERT S. MCNAMARA, THE WASHINGTON STAR SAID TODAY.

THE STAR SAID ELLSBERG, A FORMER DEFENSE DEPARTMENT AIDE, SAID THE TONKIN GULF STUDY WAS ORDERED CARRIED OUT BY THE RAND CORP., WHERE ELLSBERG SERVED FROM 1967 TO 1970. RAND ALSO HELPED PREPARE THE TOP SECRET PENTAGON STUDY OF U. S. DECISION-MAKING IN VIETNAM WHICH WAS LEAKED TO NEWSPAPERS.

ELLSBERG TOLD THE STAR THE TONKIN STUDY WAS WITHHELD FROM MCNAMARA'S KNOWLEDGE UNTIL HE WAS ASKED ABOUT IT AT A HEARING OF THE SENATE FOREIGN RELATIONS COMMITTEE IN 1968.

"THE STUDY WAS DELIBERATELY WITHHELD FROM THE SECRETARY OF DEFENSE," ELLSBERG WAS QUOTED AS SAYING. "THE JOINT CHIEFS DIDN'T WANT THE SECRETARY TO SEE IT ... IT HAD TAPES OF THE SECRETARY'S CONVERSATIONS OVERSEAS."

MCNAMARA TOLD THE COMMITTEE AT THE TIME HE HAD NOT READ ALL OF THE REPORT BECAUSE "I FIRST LEARNED OF IT A FEW DAYS AGO WHEN YOU ASKED FOR IT."

ELLSBERG, INDICTED ON FEDERAL CHARGES OF STEALING AND TURNING OVER THE PENTAGON WAR STUDY DOCUMENTS TO THE NEW YORK TIMES AND OTHER NEWSPAPERS, TOLD THE STAR THAT WHEN HE DID SO HE "TOOK IT FOR GRANTED THAT I WOULD GO TO PRISON."

BUT HE SAID HE NOW FEELS THAT BECAUSE OF LEGAL RAMIFICATIONS, HE MAY ESCAPE JAIL.

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ELLSBERG'S VIEW

Intrigue at Pentagon

By PAUL HOPE
 Star Staff Writer

Daniel Ellsberg, who turned over the secret Pentagon papers to newspapers, painted a picture today of intrigue in the Pentagon that prevented even former Secretary of Defense Robert S. McNamara from knowing some things that were going on in connection with the war in Vietnam.

He referred to one study on the Gulf of Tonkin incident in

1964 which he said was withheld from McNamara by the Joint Chiefs of Staff until the secretary had been asked about it by Sen. J. William Fulbright during testimony before the Senate Foreign Relations Committee.

"The study was deliberately withheld from the secretary of Defense," he said. "The Joint

Chiefs didn't want the secretary to see it. . . . It had tapes of all the secretary's conversations overseas."

He said that all conversations that went through the "war room" were taped and that the Joint Chiefs didn't want to call this to McNamara's attention, nor did they want him to know that "the file on the CIA was as complete as it was."

'I First Learned . . .'

The specific study to which Ellsberg referred apparently was the Command and Control Study which the Rand Corp. was commissioned to do after the Tonkin Gulf incidents. Its aim was to analyze communications between the destroyers involved and distant command centers, particularly during the second of the incidents in August 1964.

In the Feb. 20, 1966, hearings which Fulbright held on the handling of the incidents, McNamara was pressed by the senator on the contents of the report. McNamara replied that he had not read all of it, and added: "I first learned of it a few days ago when you asked for it."

Ellsberg said he had access to the study when he was working for Rand Corp. as a consultant to the Pentagon, but that he did not have access when he later worked fulltime for the Pentagon.

He recalled one McNamara conversation with Adm. Ellyses Sharp, then commander in chief of Pacific forces, that was in the study which "showed uncertainty" about whether the second Gulf of Tonkin incident did occur.

He accused McNamara of deliberately misleading Congress in hearings that led to the passage of the Gulf of Tonkin Resolution, under which President Johnson drew his authority for much of his Vietnam operations.

"He (McNamara) testified with far more certainty than the case justified. His testimony was highly misleading. He did give a very misleading impression of (his) conviction and the degree of evidence," Ellsberg said.

His Argument

Ellsberg raised the Tonkin study during a meeting with a group of reporters to bolster his contention that restrictions on who could see or talk about what within the government are as severe as those on communicating with the public.

Ellsberg, now a professor at the Massachusetts Institute of Technology, is facing criminal prosecution for leaking the Pentagon papers to newspapers.

He denied that he was fired from the project authorized by McNamara to compile documents setting forth U.S. involve-

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most in Vietnam over the past two decades.

It is known, however, that the suggestion was made to Ellsberg by Pentagon officials that he might wish to return to Rand rather than finish the portion of the Vietnam study he was assigned to do.

When asked today whether he was fired from the study group, he gave an emphatic "No."

"I wasn't bumped at all," he said. He said he had hepatitis at the time and "shouldn't have been doing what I was doing." He said he would work a couple of hours and then lie down for a couple of hours, and finally decided to leave the Pentagon.

Source "Not Rand"

He said that after he went back to Rand he continued to give advice and help on the study. He said it "was not Rand" that gave him access to the papers he gave to the newspapers but "all the people" who were involved in the preparation.

The government apparently believes Ellsberg made his copies from study documents that were in possession of Rand Corp. at Santa Monica, Calif.

Ellsberg said that when he gave the documents to newspapers and to some congressmen he "took for granted I would go to prison." He said that since he has further studied the legal ramifications of his act, he is not as certain he will wind up in jail.

The Chicago Tribune

BY CLAYTON KIRKPATRICK

CHICAGO—Thirty years from now historians may be recounting the story of how The New York Times obtained and printed secret Pentagon documents describing the background of the war in Vietnam.

How accurately will they tell it? More accurately, Times editors may hope, than historian Arthur Schlesinger Jr. told the story (Op-Ed page, June 24) of The Chicago Tribune's involvement in similar situations in 1941 and 1942.

The gist of this commentary is (1) that The Tribune, on Dec. 4, 1941—three days before the Pearl Harbor attack that launched the United States into World War II—printed the substance and much of the text of the U.S. plan for waging the war, and (2) that on June 7, 1942, it printed a story that disclosed that the U.S. had broken Japan's secret communications codes.

The controversy involving The Tribune was colored by the intense hostility between Col. Robert R. McCormick, editor and publisher, and President Franklin D. Roosevelt. The Tribune had bitterly opposed American participation in the war which broke out in Europe in 1939. It charged that Mr. Roosevelt was maneuvering secretly to get the United States into the war while promising publicly not to send Americans to die on foreign battlefields.

Schlesinger comments: "These were disclosures that might well have caused irreparable injury to the defense interests of the United States." Schlesinger argues that "the Roosevelt Administration could have made quite a case against The Tribune thirty years ago but in the end declined to do so. The question is what sort of case the Nixon Administration, in these far less stringent and perilous days, can bring against The Times."

Two basic assumptions underlying these assertions are unworthy of any scholar or historian:

- The Tribune would knowingly print material of great strategic and military sensitivity that would put the country in danger.

- The offenses were forgiven by a generous President and his Federal hierarchy.

Take the first assumption. The story published on Dec. 4, 1941, was written by Chesley M. Kelly, a Washington correspondent now dead. In the first paragraph the story identifies the war plan report as "a confidential report," not "the secret" report as Schlesinger describes it.

Later it was identified as one of several contingency reports drafted by the Department of the Army. The planned action it described was scheduled to begin on July 1, 1943—more than 18 months away from the date of publication and of the actual entry of the U.S. into the war.

The essential substance of the story was mentioned in a Senate speech by Senator Burton K. Wheeler on Nov. 4, a month before the story appeared.

Stephen T. Early, Presidential press secretary, rolled with the punch.

"Your right to print the news, is I think, unchallenged and unquestioned," Mr. Early told reporters. "It depends entirely on the decision of the publisher and editor whether publication is patriotic or treasonable."

The executive branch reacted much more violently to The Tribune story of June 7, 1942. This story reported in considerable detail the ships that comprised the Japanese fleet at the Battle of Midway.

Information for the story was supplied by Stanley Johnston, a war correspondent who had covered the earlier battle of the Coral Sea and had returned to Chicago to write that story.

Johnston's deductions were remarkably accurate—so accurate that Navy intelligence, which had broken the Japanese code, suspected that the Japanese would realize their messages had been decoded when they read the story.

The day after the story was printed the Bureau of Censorship notified Arthur Sears Henning, The Tribune's Washington bureau chief, that The Tribune was cited for violating censorship. He replied in writing and within hours was told that the bureau "had no further quarrel with The Tribune in this matter."

The matter rested until Aug. 7 when Attorney General Francis Biddle announced in Washington that a Federal grand jury in Chicago would investigate charges that The Tribune had published confidential information.

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The grand jury met and heard the evidence including testimony from Johnston, Wayne Thomis, and J. Loy Maloney, managing editor. The jury refused to indict on Aug. 20.

The best evidence that The Tribune's story had not breached U.S. security was that the Japanese continued to use the broken code after the June 7 story.

The Tribune commented editorially that the entire episode was an attempt to attack The Tribune politically.

The Tribune has never wavered in its conviction that the controversial stories violated no law and that publication was consistent with a newspaper's privileges under the First Amendment. Only a distortion of history could support the insinuations that the newspaper violated national interests.

Clayton Kirkpatrick is editor, The Chicago Tribune.

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"Oh, You Wouldn't Be Interested In The Others"



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REC-104

The Not-Very-Secret

ecy Game

By William Greider
Washington Post Staff Writer

Trafficking in government secrets, despite the recent uproar, is an old and established enterprise in Washington, conducted largely as a 9-to-5 affair, no cloaks, no daggers.

During the recent unpleasantness in the federal courts over this subject, some of the regular players of the game came forward to describe how they operate, asserting in sworn affidavits that the practice of transmitting "top secret" information to the public (and

the enemy) is old stuff, well, as old as yesterday's newspaper.

Chalmers M. Roberts, who retired the other day after a long and active career as a newsman, remembers a time when the operation approached a formal routine.

Roberts would drop by the Secretary of State's office regularly and a young special assistant would read him selected excerpts from the daily flow of classified diplomatic cables. The young man was William Scranton, later a congressman, then governor of Penn-

sylvania and a presidential aspirant in 1964. He was, of course, purveying the state secrets with the full approval of his boss, John Foster Dulles.

"What he was doing was getting out the stuff," said Roberts, who saw to it that the information was printed in The Washington Post. "I think it was a good system but, of course, it was incomplete. Generally, the people don't tell all the bad news in that kind of a system."

New York Times bureau chief Max Frankel, another one of the town's prominent

dealers in classified material, recalls how he obtained an authoritative account of the U.S.-Soviet summit talks in 1967 simply by standing beside a swimming pool in Texas and taking notes. The talkative swimmer was President Johnson.

Still another operative, Washington Post Executive Editor Benjamin Bradlee, has attested to securing portions of a confidential government memorandum on private talks in 1961 between President Kennedy and Nikita Khrushchev.

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Bradlee got it upstairs at the White House from the President. Although the material is still highly classified, it appeared in Newsweek Magazine 10 years ago.

Protection of Sources

These men, of course, are journalists who, under normal circumstances, are sworn to protect the identity of their sources—especially when they obtain and print classified information, even if it came from the President himself. However, one by-product of the recent court confrontation between the Justice Department and the newspapers over the top-secret Pentagon papers was the spectacle of new reporters coming forward with affidavits to assert that they traffic in secrets all the time, so why make a federal case out of it?

That claim apparently still shocks people, even some Supreme Court justices and some newspaper columnists (who surely know better). The reality in Washington, as described by the practitioners, is a continual process of breach-and-leak which is as grand and petty, as vast and varied in purpose, as the bloated files which are supposedly guarded by the government's system of security classifications.

George C. Wilson, who covers the Pentagon for The Post, once did a careful job of prying-and-piecing information from a variety of sources—a standard tactic for all reporters—and came up with a story that the United States was developing a new and ominous nuclear weapon, a multi-headed rocket which could launch a shower of separate warheads. That was in early 1967 and the secret weapon, now known as MIRV in the jargon of the arms race, was probably news to the Russians as well as the American public. How could Wilson justify such a serious breach?

"I'm sorry I didn't have that story three years earlier," Wilson replied. "The development was so far along that it was beyond the point of no return. The only way you can control the arms race is to know what's going on. If weapons developments cannot stand up under Congressional and public examination, then they ought not to be pursued. What we're talking about is the life or death of the planet. That should not be left to weapons experts alone."

Cynicism Develops

From the petty to the sublime, reporters who cover these areas develop a certain cynicism about security labels. No self-respecting reporter, for instance, bothers to mention that he is revealing Pentagon data merely classified "confidential" because that designation is so commonplace.

Likewise, the old hands remember that no one complained much when the Eisenhower administration provided The New York Times with the Yalta papers or in 1957 when Roberts revealed in The Post the contents of the top-secret Gaither Report on U.S. preparedness. The eight-column headline said: "Secret Report Sees U.S. in Grave Peril" and, indeed, that document helped foster heavy arms spending by Democratic presidents in the 1960s.

Re-Leaked Documents

The absurdities were especially clear in the current flap over the Pentagon study on Vietnam. Some of the contested documents were actually re-leaks. For instance, Joseph Alsop, the syndicated columnist, de-

scribed and paraphrased in 1964 some of the same contingency plans and memoranda which The New York Times revealed in 1971—and which the government went to court to keep from the public.

Frankel described the process in his 18-page affidavit as "a cooperative, competitive, antagonistic and arcane relationship."

In large part, the reporters who get the secrets are the ones who dig hardest, who cover their fields with enough expertise that officials either trust them or cannot prudently ignore their questions. Often, the process requires asking a lot of speculative questions aimed at a lot of people in government. Sometimes, the answers are provided by officials with no motive other than seeing an accurate report of what is going on.

Frankel noted:

"Without the use of secrets . . . there could be no adequate diplomatic, military or political reporting of the kind our people take for granted, either abroad or in Washington, and there could be no mature system of communication between the government and the people. That is one reason why the sudden complaint by one party to these regular dealings strikes us as monstrous and hypocritical—unless it is essentially perfunctory, for the purpose of retaining some discipline over the federal bureaucracy."

Mutual Hypocrisy

Hypocrisy, however, may reside on both sides of the strange relationship between press and government. Both The Post and The Times have sometimes found occasion to defend the sanctity of the security system, without a hint that their own reporters ignore it routinely.

The Post waxed indignant in 1963 when Otto Otepka, a State Department security officer, was leaking classified documents to a Senate subcommittee. "Unconscionable," said the Post editorial.

The Times was equally self-righteous in 1961 when it complained about the "breach of security" committed by fellow journalists, Stewart Alsop and Charles Bartlett, in their exclusive insider account of the Cuban missile crisis (an account provided by the top leader, President Kennedy).

Moreover, some of the reporters' affidavits reflect a spirit of confession, an acknowledgement that aspects of the relationship which are perfectly clear to Washington reporters have not always been made clear to their readers. "I know how strange all this must sound," Frankel conceded.

Crucial Weakness

Murray Marder, the Post's senior diplomatic reporter, noted one of the crucial weaknesses of the relationship which readers seldom perceive:

"The semi-covert disclosure of classified information in inherently weighted in favor of officials who control the information. The 'volunteering leaking' is selective: often a portion of a classified cable is leaked but not key qualifications; or a whole cable is leaked but not previous or subsequent cables changing or revoking the directions given in the 'volunteered leak.'"

Newspapermen complain periodically about the classifications and the overemphasis on secrecy, but day by day they have had to live with the conditions. As Don Oberdorfer of The Post points out, the worst part for reporters is that the security labels enable government people to hide behind

the presumption that nobody has the right to know these things except them. That puts the reporters on the weak end of the conflict.

The government can manipulate the press and the security system occasionally, in part because the process of selective leaks gratifies one of the big ego games of journalism — the reporter's competitive instinct to be first with a story, to be exclusive.

Reporters and editors talk freely among themselves about "leaks" as the source of stories, but "leak" is a word which almost never appears in news stories. The mystique of the intrepid reporter, breathlessly revealing the nuggets which he has dug out of the government, is still strong in the profession.

It may be self-evident to the reporter why a high official is ignoring security and giving him classified information, but the reporter does not always make the purpose clear to the less sophisticated of his readers. If he did so, he might compromise his source and, thus, close doors in the future. More important, he would be making it clear that he is, on some occasions, a conduit which government officials use. Frankel best described the variety of motives involved:

"Presidents make 'secret' decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputations. The military services conduct 'secret' research in weaponry only to reveal it for the purpose of enhancing their budgets, appearing superior or inferior to a foreign army, gaining the vote of a congressman or the favor of a contractor."

Leak as Lever

The good reporter, of course, does not stop there. Provided with part of the story, he will dig for as much of the rest as he can get, using the "leaked" information as leverage with other officials to get their side of the issue and the unrevealed information. Sometimes, the result is a story directly in conflict with the original purpose behind the "leak."

In 1965, for example, Murray Marder was given access to classified diplomatic cables "designed to sustain the Government's public assertion that the purpose of the U.S. military intervention in the Dominican Republic was to 'save American lives.'" Marder, however, managed to get prior cables from other sources which showed a conflicting version—and his story only deepened the portrait of government duplicity.

Reporters disagree among themselves about the true proportions of the flow of secrets. Some would say that most of the secrets are East. A story on their dour government officials or congressmen; others insist that the vast majority are pried out of the government in the traditional adversary role.

In either case, as Frankel's list of examples demonstrates, a secret can be breached to frustrate a policy proposal as well as to advance one.

Subject Avoided

Typically, a reporter will get the information but not the document. He might insist on inspecting the classified paper (particularly if he does not trust the source). In some situations, the source will scissor off the "secret" label before handing over a document (a precaution which may ease his mind, but does not improve his legal situation). Once in a great while, an investigation will follow a newspaper breach (George Wilson, to the best of his knowledge, has been investigated three times). On many occasions, the subject of security classification will be avoided in conversation by both reporter and source, although both know they are breaching it.

Inevitably, some symbiotic relationships develop and the very savvy reader will recognize a relationship between the reporter's byline and the probable source of his information. Hanson Baldwin, the former military affairs editor of The Times, was for many years recognized as an authority on what the Joint Chiefs of Staff were thinking. Others in government would read his stories to find out.

All of this, of course, involves considerable risk for reporters. If the government sources choose to manipulate the declassification in the worst way, the reporters can come up with egg on the face.

In the summer of 1967, amid controversy over South Vietnam's national elections, columnists Rowland Evans and Robert Novak as well as William S. White reported authorita-

tively that Ambassador Ellsworth Bunker was heavily discounting reports that Saigon generals were planning to preserve their power, in the remote event that civilians should win the election.

Evans and Novak cited a confidential cable from Saigon in which "Bunker methodically knocked down one charge after another . . . Bunker's cable has deep significance." The columnists apparently were not shown another embassy cable sent from Saigon 10 days earlier, which not only acknowledged what the Vietnamese generals were up to, but added that the activity "is being treated as 'top secret' for the present and will not be admitted till after the 3 September elections, if at all."

Despite the hazards, reporters and public officials will continue to set aside the "top secret" labels when it suits them. Just a few days before the Pentagon papers surfaced, a carload of reporters and editors from The Post lunched at the Pentagon, where Navy brass treated them to a slide show and lecture on classified intelligence concerning naval strength in the Middle East. A story on their dour outlook appeared the next day, attributed to unnamed sources.



MAX FRANKEL

... old hand at secrets

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REG-22

Gravel Papers' Disclosures

A-15

By Chalmers M. Roberts
 Washington Post Staff Writer

As President Johnson pondered his decision on whether to curtail bombing North Vietnam in March, 1968, the U.S. ambassador in Moscow advised that "any serious escalation except in South Vietnam would trigger strong Soviet response although I believe they will endeavor to avoid direct confrontation with us in that area."

This top secret cable from Ambassador Llewellyn E. Thompson to Secretary of State Dean Rusk was made public yesterday by Sen. Mike Gravel (D-Alaska) along with other portions of the Pentagon papers.

The documents that the senator disclosed include the Pentagon analysis of "the attempt to de-escalate" in January-July, 1967, "the long road to de-escalation" in August-December, 1967, and "the corner is turned" in January-March, 1968.

President Johnson on March 31 announced he was limiting the bombing, and in the same

speech, he said he would not run for another term.

Other sections of the papers made public by Gravel cover the year 1966 as well as earlier material going back to 1940. Much of what is in all of these summaries, which contain only a few cables and many internal Pentagon memoranda, has already been printed.

The Thompson cable to Rusk was one of many views solicited in 1968 after the Communists' Tet offensive

produced a major policy review in Washington. There is no way to tell, since there are no Johnson documents in these Pentagon papers, what affect the cable may have had on the Johnson decision.

Thompson submitted these "general observations" on the various schemes for escalating the war that were sent to him for consideration:

"Much would depend upon general setting in which given action took place. If any of

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 The Wall Street Journal _____
 The National Observer _____
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them come out of the blue or in situation which appeared to reflect U.S. decision to achieve clear military victory. Soviet reaction would be far stronger than if it appeared to be effort to offset military reverses.

"Important also would be current weight of opinion in Politburo between hawks and doves of which we know little."

Broad Reaction

Thompson also commented that "Soviet reactions would not necessarily be confined to Vietnam. They could increase tension in Germany, particularly in Berlin, in Korea and Middle East. They could revert to all-out cold war and in any event would step up diplomatic and propaganda activity."

The envoy also said that in all of the alternatives listed for him, "I would expect increased Soviet military aid which in some cases might go as far as use of volunteers if North Vietnam would accept them, though most likely in anti-aircraft and other defensive roles . . ."

The cable from Thompson, who has now retired except for his participation in the SALT talks, provides one insight into the pressures on President Johnson. The bulk of the material in the papers made public by Gravel depicts the Joint Chiefs of Staff relentlessly pushing for escalatory steps and opposing any limitation on the bombing policy of that time.

The papers recount the request of Gen. William C. Westmoreland, then the commander in South Vietnam, for more than 200,000 more men. But they do not clear up the long dispute as to whether it was Westmoreland or Gen. Earle C. Wheeler, then chairman of the Joint Chiefs, who actually proposed the big figure.

The unnamed Pentagon analyst at one point said that the Joint Chiefs "reluctantly recommended deferring the requests of Gen. Westmoreland for an emergency augmentation" of his forces. "Rather," the analyst wrote, "they proposed a callup of reserves to meet both the requirements of Vietnam augmentation in the intermediate future and to bring drawn-down forces in the strategic reserve up to strength."

"The tactic the Chiefs were using was clear: by refusing to scrape the bottom of the barrel any further for Vietnam they hoped to force the President to 'bite the bullet' on the callup of the reserves — a step they had long thought essential, and that they were determined would not now be avoided."

McNamara Dissent

These documents are full of JCS studies and recommendations and of the growing dissent of Defense Secretary Robert S. McNamara to further escalation in the period prior to Tet.

There are repeated JCS calls for mining Haiphong harbor and growing arguments advanced against such escalation by the Pentagon civilian leaders.

Also included is an unsolicited letter to President Johnson in early 1967 from McGeorge Bundy after he had left his White House post. He suggested "a publicly stated ceiling to the level of American participation in Vietnam, as long as there is no further marked escalation on the enemy side."

But he also said that "if we can avoid escalation that does not seem to work, we can focus attention on the great and central achievement of these last two years: on the defeat we have prevented. The fact that South Vietnam has not been lost and is not going to be lost is a fact of truly massive importance in the history of Asia, the Pacific, and the U.S. An articulate minority of 'Eastern intellectuals' (like Bill Fulbright) may not believe in what they call the domino theory, but most Americans (along with nearly all Asians) know better. Under this Administration the United States has already saved the hope of freedom for hundreds of millions . . ."



Associated Press

New York Times representatives holding press conference after court decision are, from left, Managing Editor A. M. Rosenthal, Arthur Ochs Sulzberger, president and publisher of The Times, and vice president James Goodale.

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Diplomat Reaction To Court Ruling

By Dorothy McCardle

Reactions to yesterday's Supreme Court decision on the Pentagon papers ranged from astonishment to relief at last night's dinner party given by Ivory Coast Ambassador and Mrs. Timothee Ahoua in honor of French Ambassador and Mrs. Charles Lucet.

The ambassador from West Germany, Rolf Pauls, said that "Every country in Europe had been watching the results of that Supreme Court decision."

Luxembourg Ambassador Jean Wagner said that the French ambassador, the German ambassador and he had said privately that "No such decision could have been given against the government" in their countries.

Assistant Secretary of State for African Affairs David Newsom had come to the dinner from a party for African ambassadors given at the Congolese embassy.

"The African ambassadors were astonished by the exhibition of American freedom," said Newsom.

Sen. Vance Hartke (D-Ind.) was asked by foreign diplomats to explain the meaning of the decision.

"This decision protects the basic principles of democracy," said Sen. Hartke. "Any other decision would have been the first step toward dictatorship."

Washington lawyer Philip Amram said that last weekend on Long Beach Island, N.J., he had made bets with a couple of Philadelphia lawyers.

"They all decided the decision would be 6 to 3," said Amram. (Which it was.)

The dinner for the Lucets was given for the purpose of making French am-

bassador a commander of the National Order of the Ivory Coast.

For Ambassador Lucet, it was the first time Ambassador Lucet had been honored by an African nation.

The Ivory Coast gained its independence from France in 1960 and as Ambassador Ahoua said, "Independence has brought the Ivory Coast and France much closer together."

"Three ambassadors had said privately that 'No such decision could have been given against the government' in their countries."

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Date **JUL 1 1971**

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UPI-73

(VIET REPORTS)

BOSTON--EDITORS OF THE TWO BOSTON NEWSPAPERS INVOLVED IN PUBLICATION OF THE PENTAGON PAPERS HAVE APPLAUDED THE SUPREME COURT RULING CLEARING THE WAY FOR PUBLICATION OF THE TOP-SECRET PENTAGON STUDY OF THE VIETNAM WAR.

"WE WERE THRILLED BY WHAT THE COURT DID," TOM WINSHIP, EDITOR OF THE GLOBE SAID WEDNESDAY. THE RULING WAS "SIMPLY A GREAT WIN FOR FREEDOM."

ERWIN B. CANHAM, EDITOR-IN-CHIEF OF THE CHRISTIAN SCIENCE MONITOR WHICH THIS WEEK BEGAN PUBLISHING PORTIONS OF THE STUDY, CALLED THE COURT RULING "A LANDMARK DECISION."

"THIS IS PROBABLY THE MOST IMPORTANT SUPREME COURT DECISION TO THE PRESS IN HISTORY," CANHAM SAID.

THE RULING REQUIRES "SPECIAL STUDY BECAUSE IT IS SIX JUDGES' DECISION," HE SAID. "IT IS GRATIFYING ON NARROW GROUNDS BECAUSE THE GOVERNMENT HAS NOT MET THE BURDEN OF SHOWING JUSTIFICATION FOR A RESTRAINT."

HOWEVER, CANHAM SAID THE RULING WAS "FAR MORE GRATIFYING IN VIEW OF THE MANY STRONG OPINIONS BY DIFFERENT JUSTICES" THAT AN INFORMED PUBLIC OPINION THROUGH A FREE PRESS IS A NECESSITY TO PROTECT THE VALUES OF DEMOCRATIC GOVERNMENT."

WINSHIP, WHOSE PAPER HAD BEEN BARRED BY COURT ORDER FROM PUBLISHING THE DOCUMENTS, SAID THE "MAJORITY OF THE SUPREME COURT SIMPLY AFFIRMED THE RIGHT THE CONSTITUTION GAVE US TO PUBLISH A NEWSPAPER WITHOUT THE GOVERNMENT OR THE COURTS LOOKING OVER OUR SHOULDERS."

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UPI-77

ADD 2 VIET REPORTS, WASHINGTON

SENATE DEMOCRATIC LEADER MIKE MANSFIELD SAID DEFENSE SECRETARY LAIRD HAD AGREED TO SEND A DUPLICATE COPY OF THE SECRET PENTAGON PAPERS TO THE SENATE.

MANSFIELD TOLD REPORTERS HE CALLED LAIRD EARLY THIS MORNING IN BEHALF OF HIMSELF AND SENATE MINORITY LEADER HUGH SCOTT TO MAKE THE REQUEST.

LAIRD PROMISED TO SEND THE SECOND SET OF THE DOCUMENTS TO THE SENATE EARLY NEXT WEEK, MANSFIELD SAID. THEN, HE ADDED, ONE COPY WILL BE SENT TO THE ARMED SERVICES COMMITTEE AND THE OTHER TO THE FOREIGN RELATIONS COMMITTEE.

THERE IS A TENTATIVE AGREEMENT BETWEEN THE TWO COMMITTEES TO HOLD JOINT HEARINGS INTO THE ORIGINS OF THE VIETNAM WAR.

MANSFIELD SAID THE SECRECY STAMP WILL REMAIN ON THE PAPERS, BUT STAFF MEMBERS OF BOTH COMMITTEES HOLDING SECURITY CLEARANCES WILL BE ABLE TO USE THEM IN PREPARATION FOR THE HEARINGS.

THE SENATOR SAID HE EXPECTED THE PRELIMINARY HEARINGS DURING THE SUMMER WOULD BE HELD IN CLOSED SESSION -- BUT THAT OPEN HEARINGS WOULD BE HELD SOMETIME AFTER LABOR DAY.

MANSFIELD ALSO SAID HE HAD NO PLANS TO DISCIPLINE GRAVEL. HE SAID HE PLANNED TO "TALK IT OVER" WITH GRAVEL, HOWEVER, "IN A FRIENDLY, UNDERSTANDING FAHSION."

MANSFIELD EMPHASIZED THAT GRAVEL HAD NOT BROKEN ANY SENATE RULES BY RELEASING THE DOCUMENTS.

SENATE SECRETARY FRANK VALEO, 3-283, SAID TH
 SENATE SECRETARY FRANK VALEO, MEANWHILE, SAID THAT SO FAR ONLY THREE SENATORS HAD INSPECTED THE PAPERS, STORED IN HIS VAULT. HE IDENTIFIED THEM AS SENS. CHARLES H. PERCY, R-ILL., HARRY F. BYRD, JR., D-VA., AND J. W. FULBRIGHT, D-ARK.

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UPI-82

ADD 3 VIET REPORTS, WASHINGTON

MANSFIELD ALSO REPORTED THERE WERE TEAMS WORKING "ROUND-THE-CLOCK, SEVEN-DAYS-A-WEEK" TO DECLASSIFY THE DOCUMENTS. HE EXPECTED THE PROCESS TO BE COMPLETED WITHIN 30 DAYS. HE ADDED HE THOUGHT SECRECY STAMPS WOULD BE REMOVED FROM ALL "BUT THE MOST VERY SENSITIVE" INFORMATION IN THE DOCUMENTS.

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REC-51

UPI-111

(COURT DECISION)

WASHINGTON--THE SUPREME COURT RULED AGAINST THE GOVERNMENT
TODAY AND GAVE THE NEW YORK TIMES AND WASHINGTON POST FULL FREEDOM
TO RESUME PUBLISHING THE SECRET PENTAGON STUDY OF U. S. INVOLVEMENT
IN THE VIETNAM WAR.

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UPI-112

ADD 1 COURT WASHINGTON (UPI-111)

IN THE MOMENTOUS FREEDOM-OF-THE-PRESS DECISION, THE COURT REJECTED THE JUSTICE DEPARTMENT'S REQUEST FOR AN INJUNCTION TO BLOCK PUBLICATION OF STORIES BASED ON THE DOCUMENTS. THE GOVERNMENT ARGUED THEY JEOPARDIZED NATIONAL SECURITY.

THE RULING WAS EXPECTED ALSO TO LIFT LOWER COURT INJUNCTIONS CURBING THE BOSTON GLOBE AND THE ST. LOUIS POST-DISPATCH FROM PRINTING STORIES BASED ON THE SECRET DOCUMENTS.

THE OPINION WAS DELIVERED IN THE FORM OF AN UNSIGNED COURT ORDER. THE VOTE WAS 6 TO 3.

SINCE THE TIMES AND POST APPEARED IN PRINT WITH A SERIES ON THE WAR STUDY EARLIER THIS MONTH, OTHER NEWSPAPERS HAVE OBTAINED THE MATERIAL AND PUBLISHED STORIES.

THEY INCLUDED THE BOSTON GLOBE, THE ST. LOUIS POST-DISPATCH, THE KNIGHT NEWSPAPERS, THE CHICAGO SUN-TIMES, THE LOS ANGELES TIMES AND THE CHRISTIAN SCIENCE MONITOR.

IN ADDITION, SEN. MIKE GRAVEL, D-ALASKA, BEGAN READING THE 7,000-WORD STUDY IN PUBLIC TUESDAY, MAKING COPIES AVAILABLE TO UPI AND AP ON A PAGE-BY-PAGE BASIS.

THE TIMES BEGAN ITS A SERIES ON JUNE 13 BUT WAS STOPPED BY A COURT ORDER AFTER THE THIRD INSTALLMENT. ALTHOUGH A LATER ORDER APPROVED BY THE SUPREME COURT WOULD HAVE PERMITTED IT TO GO AHEAD WITH SOME OF THE MATERIAL, THE PAPER WAS BARRED FROM PRINTING ANYTHING DESCRIBED IN A "SPECIAL APPENDIX." THE GOVERNMENT LATER ADDED TEN MORE ITEMS TO THE PROHIBITED LIST.

THE POST STARTED ITS SERIES JUNE 18 AND PRINTED TWO INSTALLMENTS BEFORE A TEMPORARY HALT WAS ORDERED BY A FEDERAL APPEALS COURT.

BOTH PAPERS DECIDED NOT TO RUN ANY MORE STORIES OF THEIR OWN UNTIL THE SUPREME COURT RULED ON THE JUSTICE DEPARTMENT'S OBJECTION. ALL THE SECRET DOCUMENTS WERE SUPPLIED THE NINE JUSTICES IN CONSIDERING THE CASE.

10
U. S. SOLICITOR GENERAL ERWIN N. GRISWOLD TOLD THE COURT ON SATURDAY THAT THE CONSTITUTION'S GUARANTEE OF A FREE PRESS MUST YIELD TO "THE IMPORTANT RIGHT OF THE GOVERNMENT TO FUNCTION."

HE SAID PUBLICATION OF THE ARTICLES COULD AFFECT THE PROBLEM OF WINDING WON THE WAR, THE RETURN OF U. S. PRISONERS FROM NORTH VIETNAM AND THE SALT DISARMAMENT TALKS.

LAWYERS FOR THE NEWSPAPERS CONTENDED THAT THE GOVERNMENT HAD ESTABLISHED NO PROOF WHATEVER IN SEVERAL LOWER COURT HEARINGS THAT SUCH RESULTS WOULD OCCUR.

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UPI-7

(ELLSBERG)

BOSTON--THE GOVERNMENT CONTINUED SEARCHING TODAY FOR DANIEL ELLSBERG, ACCUSED OF ILLEGAL POSSESSION OF SECRET GOVERNMENT DOCUMENTS, DESPITE PROMISES FROM HIS LAWYERS THAT HE WOULD SURRENDER TO FEDERAL AUTHORITIES AT 10 A.M. EDT.

LEONARD B. BOUDIN, AN ATTORNEY FOR ELLSBERG, SUNDAY CRITICIZED THE GOVERNMENT'S MANHUNT AS "SCANDALOUS."

"WE MADE A VERY PLAIN LAWYER-LIKE PROPOSAL TO PRODUCE DR. ELLSBERG AND INSTEAD THEY'RE ENGAGED IN THIS MACABRE MANHUNT WHOSE ONLY PURPOSE IS TO CREATE HYSTERIA."

LAWYERS FOR ELLSBERG, 40, A SENIOR RESEARCH ASSOCIATE AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY (MIT), SAID SATURDAY HE WOULD SURRENDER TO U.S. ATTORNEY HERBERT F. TRAVEERS TO ANSWER CHARGES OF ILLEGALLY POSSESSING AND FAILING TO RETURN DOCUMENTS FROM THE PENTAGON'S REVIEW OF THE VIETNAM WAR.

ELLSBERG REPORTEDLY LEAKED THE DOCUMENTS TO THE NEW YORK TIMES. FEDERAL OFFICIALS SPENT ALL DAY SUNDAY LOOKING FOR HIM WITHOUT SUCCESS.

BOUDIN HAD OFFERED SATURDAY TO PRODUCE ELLSBERG IMMEDIATELY IF THE GOVERNMENT COULD GUARANTEE HIS RELEASE WITHOUT BAIL. SPOKESMEN FOR THE JUSTICE DEPARTMENT SAID IN WASHINGTON THE OFFER WAS REJECTED BECAUSE OF "THE NATURE OF THE CRIME."

6/28--GE846A

EX-105

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W. B. Galt
ETN

UPI-36

(GALLUP POLL ON THE SECRET PAPERS)

NEW YORK--MORE AMERICANS DISAPPROVE THAN ARE IN FAVOR OF THE GOVERNMENT'S ATTEMPTS TO HALT PUBLICATION OF THE PENTAGON PAPERS, ACCORDING TO A GALLUP POLL PUBLISHED IN THE CURRENT ISSUE OF NEWSWEEK MAGAZINE.

THE SURVEY, COMMISSIONED BY NEWSWEEK AND CONDUCTED BY TELEPHONE LAST WEEK BY THE GALLUP ORGANIZATION, IS BASED ON INTERVIEWS WITH 339 PERSONS "REPRESENTING A CROSS SECTION OF THE NATION."

FORTY EIGHT PER CENT OF THOSE POLLED WERE AGAINST THE GOVERNMENT'S DECISION TO GO INTO THE COURTS TO STOP PAPERS PRINTING STORIES BASED ON THE CLASSIFIED DOCUMENTS. THIRTY THREE PER CENT APPROVED THE ACTION WHILE 19 PER CENT HAD NO OPINION.

DESPITE THIS, MORE OF THOSE SURVEYED FELT THAT TAKING EVERYTHING INTO ACCOUNT THERE WAS MORE DANGER OF NATIONAL SECURITY BEING HARMED (47 PER CENT) THAN THAT FREEDOM OF THE PRESS WAS BEING VIOLATED (34 PER CENT). AGAIN, 19 PER CENT HAD NO OPINION.

6/28--E1020AED

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Washington Post

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UPI-126

ADD ELLSBERG, BOSTON

IN WASHINGTON, SEN. J. WILLIAM FULBRIGHT, D-ARK., CHAIRMAN OF THE SENATE FOREIGN RELATIONS COMMITTEE, ACKNOWLEDGED THAT ELLSBERG HAD GIVEN THE COMMITTEE A "PARTIAL SET" OF THE PENTAGON PAPERS, MOSTLY THOSE DEALING WITH THE EVENTS SURROUNDING THE GULF OF TONKIN INCIDENT IN AUGUST, 1964.

HE HAD TOLD REPORTERS LAST WEEK THAT THE COMMITTEE HAD SOME OF THE PAPERS IN ITS SAFE, BUT HE DECLINED THEN TO SAY WHERE THEY HAD COME FROM.

"IT WAS UP TO HIM TO SAY," FULBRIGHT EXPLAINED TODAY.

HE ESTIMATED THAT HE HAD A THIRD TO A HALF OF THE TOTAL DOCUMENTS. NO BREACH OF SECURITY WAS INVOLVED, HE SAID, BECAUSE ALL OF THE COMMITTEE MEMBERS ARE CLEARED FOR SECURITY MATTERS.

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UPI-33

(ELLSBERG)

BOSTON--DR. DANIEL ELLSBERG SURRENDERED TO FEDERAL AUTHORITIES
 TODAY AND ADMITTED HE WAS THE SOURCE FOR A NEW YORK TIMES SERIES
 ON TOP SECRET PENTAGON DOCUMENTS ON THE VIETNAM WAR.

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UPI- 35

ADD ELLSBERG, BOSTON (UPI-33)

ELLBERG, HIS ARM AROUND HIS WIFE AND ACCOMPANIED BY HIS TWO LAWYERS, CAME OUT OF HIDING TO SURRENDER TO U.S. ATTORNEY HERBERT F. TRAVERS SHORTLY BEFORE 10 A.M. EDT.

HE WAS MOBBED BY NEWSMEN AND SPECTATORS AS HE ARRIVED OUTSIDE THE POST OFFICE BUILDING, WHICH HOUSES THE FEDERAL COURTS AND TRAVERS' 12TH FLOOR OFFICE. HE ADMITTED BEFORE ENTERING THE BUILDING HE HAD PROVIDED THE PENTAGON DOCUMENTS ON U.S. INVOLVEMENT IN VIETNAM TO THE NEW YORK TIMES.

"I FELT AS AN AMERICAN CITIZEN I COULD NO LONGER COOPERATE IN CONCEALING THIS INFORMATION FROM THE AMERICAN PUBLIC," HE SAID, AND CRITICIZED THE GOVERNMENT'S CLASSIFICATION PROCEDURES.

"I DID THIS CLEARLY AT MY OWN JEOPARDY AND I AM PREPARED TO ANSWER TO ALL THE CONSEQUENCES OF THESE DECISIONS," ELLSBERG SAID. "THAT INCLUDES THE PERSONAL CONSEQUENCES TO ME AND MY FAMILY, WHATEVER THESE MAY BE. WOULDN'T YOU GO TO PRISON TO HELP END THIS WAR?"

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UPI-37

ADD ELLSBERG, BOSTON

ELLSBERG ALSO SAID HE "DELIVERED" THE PENTAGON PAPERS TO THE SENATE FOREIGN RELATIONS COMMITTEE.

THE SMILING ELLSBERG, 40, A SENIOR RESEARCH ASSOCIATE AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY (MIT), KEPT HIS ARM AROUND HIS WIFE AS THEY TRIED TO GET INTO THE FEDERAL BUILDING.

ATTORNEY CHARLES R. NESSON DROVE UP WITH THE ELLSBERGS, WHILE LEONARD B. BOUNDIN, WHO ALSO IS COUNSEL FOR ELLSBERG, WAITED OUTSIDE THE BUILDING.

ABOUT 100 PERSONS BURST INTO APPLAUSE AS ELLSBERG ARRIVED SHORTLY BEFORE 10 A.M. EDT. A HALF DOZEN PERSONS FROM MIT PICKETED THE BUILDING WITH SIGNS WHICH READ "WHY ARREST ELLSBERG" AND "ELLSBERG IS A REAL PATRIOT."

NEWSMEN MOBBED ELLSBERG AND HE ANSWERED QUESTIONS IN A FLURRY. HE WAS DELAYED SEVERAL MINUTES BEFORE GOING INTO THE BUILDING AND ENTERING TRAVERS' OFFICE WHERE THE PRESS WAS BARRED.

6/28--E1022AED

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UPI-42

ADD ELLSBERG, BOSTON

"I GAVE THE INFORMATION CONTAINED IN THE PENTAGON PAPERS TO THE CHAIRMAN OF THE FOREIGN RELATIONS COMMITTEE IN THE FALL OF 1969," ELLSBERG SAID. "BY THE SPRING OF THIS YEAR, SOME 9,000 (MORE) PEOPLE HAD BEEN KILLED ... I CAN ONLY REGRET AT THE SAME TIME (1969) I DID NOT RELEASE THEM TO THE PRESS. I HAVE DONE SO."

A FEDERAL WARRANT CHARGING ELLSBERG WITH ILLEGALLY POSSESSING AND FAILING TO RETURN THE DEFENSE DEPARTMENT DOCUMENTS WAS ISSUED FRIDAY NIGHT IN LOS ANGELES. ELLSBERG SAID HE HAD BEEN HIDING IN CAMBRIDGE EVER SINCE DISAPPEARING NEARLY TWO WEEKS AGO.

6/28--E1034AED

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Bishop ☒
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Callahan ☒
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W. J. Sullivan

UPI-52

ADD ELLSBERG, BOSTON

AS HE ENTERED TRAVERS' OFFICE, ELLSBERG WAS FORMALLY PLACED UNDER
ARREST BY FBI AGENTS. A SPOKESMAN SAID HE WOULD BE ARRAIGNED BEFORE
A FEDERAL MAGISTRATE.

6/28--E1048AED

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REC 4

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ELLSBERG 6-28 NX
 WITH REPORT 027A

BOSTON (UPI)--THE GOVERNMENT CONTINUED SEARCHING TODAY FOR DANIEL ELLSBERG, ACCUSED OF ILLEGAL POSSESSION OF SECRET GOVERNMENT DOCUMENTS, DESPITE PROMISES FROM HIS LAWYERS THAT HE WOULD SURRENDER TO FEDERAL AUTHORITIES AT 10 A.M. EDT.

LEONARD B. BOUDIN, AN ATTORNEY FOR ELLSBERG, SUNDAY CRITICIZED THE GOVERNMENT'S HUNT AS "SCANDALOUS."

"WE MADE A VERY PLAIN LAWYER-LIKE PROPOSAL TO PRODUCE DR. ELLSBERG AND INSTEAD THEY'RE ENGAGED IN THIS MACABRE HUNT WHOSE ONLY PURPOSE IS TO CREATE HYSTERIA."

LAWYERS FOR ELLSBERG, 40, A SENIOR RESEARCH ASSOCIATE AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY (MIT), SAID SATURDAY HE WOULD SURRENDER TO U.S. ATTORNEY HERBERT F. TRAVERS TO ANSWER CHARGES OF ILLEGALLY POSSESSING AND FAILING TO RETURN DOCUMENTS FROM THE PENTAGON'S REVIEW OF THE VIETNAM WAR.

ELLBERG REPORTEDLY LEAKED THE DOCUMENTS TO THE NEW YORK TIMES. FEDERAL OFFICIALS SPENT ALL DAY SUNDAY LOOKING FOR ELLSBERG WITHOUT SUCCESS.

BOUDIN HAD OFFERED SATURDAY TO PRODUCE ELLSBERG IMMEDIATELY IF THE GOVERNMENT COULD GUARANTEE HIS RELEASE WITHOUT BAIL. SPOKESMAN FOR THE JUSTICE DEPARTMENT SAID IN WASHINGTON THE OFFER WAS REJECTED BECAUSE OF "THE NATURE OF THE CRIME."

THE WARRANT WAS ISSUED LATE FRIDAY NIGHT IN LOS ANGELES. ELLSBERG HAS NOT BEEN SEEN SINCE JUNE 16, WHEN HE HAD LUNCH AT THE MIT FACULTY CLUB.

THAT NIGHT, A FORMER NEW YORK TIMES REPORTER, SIDNEY ZION, IDENTIFIED ELLSBERG AS THE SOURCE FOR A TIMES SERIES ON THE DEFENSE DEPARTMENT STUDY TRACING U.S. INVOLVEMENT IN VIETNAM. THE ST. LOUIS POST DISPATCH LATER QUOTED A HIGH ADMINISTRATION OFFICIAL AS ALSO NAMING ELLSBERG AS THE SOURCE.

EX-105

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133 JUL 6 1971

WASHINGTON CAPITAL NEWS SERVICE

File 5-ERH

65-74060 Sub A

55 JUL 9 1971

ELLSBERG, A MARINE VETERAN, GRADUATED SUMMA CUM LAUDE FROM HARVARD IN 1952, EARNED HIS MASTERS IN 1954, WAS A JUNIOR FELLOW DURING 1956-59, AND RECEIVED HIS DOCTORATE IN ECONOMICS FROM HARVARD IN 1963.

IN 1964, HE JOINED THE DEFENSE DEPARTMENT AS A SPECIAL ASSISTANT TO JOHN T. MCNAUGHTON, ASSISTANT DEFENSE SECRETARY FOR INTERNATIONAL SECURITY. MCNAUGHTON WAS RESPONSIBLE FOR COORDINATING THE PENTAGON REPORT WHICH TRACED U.S. INVOLVEMENT IN VIETNAM FROM THE TRUMAN ADMINISTRATION TO 1963.

ELLSBERG WAS AN ADVISER WITH THE STATE DEPARTMENT FROM 1965 TO 1967, SPENDING CONSIDERABLE TIME IN SOUTHEAST ASIA. IN 1967, HE JOINED RAND CORP. OF SANTA MONICA, CALIF., WHICH HELPED PREPARE THE CLASSIFIED VIETNAM REPORT.

HE LEFT RAND LAST YEAR TO BECOME A SENIOR RESEARCH ASSOCIATE AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY'S CENTER FOR INTERNATIONAL STUDIES, CONCENTRATING ON SOUTHEAST ASIAN STUDIES.

PT242AED

FBI Is Still Hunting For Daniel Ellsberg

BOSTON, June 27 (AP)—

The FBI said today it was still trying to find Daniel Ellsberg, the former Pentagon researcher charged in a federal warrant with unauthorized possession of top-secret documents and with failure to return them.

The 40-year-old Ellsberg announced Saturday through his lawyers that he would surrender to the U.S. Attorney in Boston at 10 a.m. Monday.

Ellsberg, a senior research associate at the Massachusetts Institute of Technology's Center for International Studies in nearby Cambridge, was named by a former New York Times reporter as the man who leaked secret Pentagon documents to The Times.

Ellsberg's lawyers said at a news conference Saturday he would have appeared that day if he received assurances of being released on his own recognizance.

Assistant U.S. Attorney James N. Gabriel said, "The FBI is looking for Mr. Ellsberg. If they find him, they will apprehend him and in the normal process, he will go before a magistrate immediately."

Gabriel said he was unable to consider personal recognizance as a condition of release "under the circumstances."

The warrants against Ellsberg were issued at midnight Friday in Los Angeles.

One of his attorneys, Leonard B. Boudin, said there were three reasons why the decision was made to surrender Ellsberg on Monday: "The availability of a federal magistrate, the availability of a federal judge, and the possible need to raise bail. We want to do this on a working day."



Daniel Ellsberg's lawyers, Charles R. Nesson, left, and Leonard B. Boudin, at Saturday news conference.

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REC-8

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The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

JUN 28 1971

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Supreme Court Decision On Vietnam Study Awaited

*Ruling Due on the Government's Effort
to Prevent Further Publication of
Pentagon's Papers on the War*

By CHRISTOPHER LYDON
 Special to The New York Times

WASHINGTON, June 27—The New York Times and The Washington Post waited today for a Supreme Court decision on the Government's effort to prevent further publication of the Pentagon's secret history of American involvement in Vietnam.

The court, which heard a two-hour argument of the case in an unusual session on Saturday, holds its last scheduled meeting of the current term tomorrow. It could then dispose entirely of the case, release only a decision and supply opinions later, or it could extend its session.

Four justices—Hugo L. Black, William O. Douglas, William J. Brennan Jr., and Thurgood Marshall—voted last week to permit publication of the Pentagon papers without a hearing.

Ellsberg to Surrender

Chief Justice Warren E. Burger and Justices John M. Harlan and Harry E. Blackmun voted with Justices Byron R. White and Potter Stewart to hold the Saturday hearing, but they lost a 6 to 3 vote to consider some of the security arguments in closed session, as the Government had requested.

The Federal Bureau of Investigation was reportedly

pressing its search for Dr. Daniel Ellsberg despite a statement by his lawyers that he would give himself up in Boston tomorrow. Dr. Ellsberg, a senior research associate at the Massachusetts Institute of Technology, has been named in some reports as the source of the Pentagon study on which The New York Times based its articles. The Times has refused to discuss the source of its material.

McGovern's Opinion

Elsewhere, there were new reactions to the issues raised by the Pentagon documents, which The Times began publishing on June 13.

In Columbus, Ohio, Senator George S. McGovern, a South Dakota Democrat and the only declared candidate in the 1972 Presidential campaign, said the papers revealed crimes of deception by Government officials far more serious than any violation of security classification involved in their release.

The Episcopal dean of Washington Cathedral, the Very Rev. Francis B. Sayre Jr., said he had known Vietnam policy makers as friends and par-

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ishioners but had not realized "the extent of the infection by which my friends were led to think of themselves almost as God, and therefore could excuse themselves the callous disposition of other people's lives, the cynical bamboozling of the body politic, scorn of law and lawmakers alike, and the abuse of truth."

According to Newsweek magazine, a survey by the Gallup organization revealed that a majority of American opinion disapproved of the government effort at suppression. Weighing national security and freedom of the press, respondents gave higher priority to security by a margin of 47 per cent to 34 per cent.

A majority also felt that the Government kept too much information secret. Respondents were said to have disapproved of the specific action against publication of the Pentagon papers by a margin of 48 per cent to 33 per cent. *FORMER*

George W. Ball, Under Secretary of State in the period when the Johnson Administration was escalating the American effort in Vietnam, said today that the Pentagon papers ought to be published but cautioned against the search for villains or heroes in them.

Appearing on the "Face the Nation" program of the Columbia Broadcasting System television network, Mr. Ball, now a lawyer in international practice, seemed to agree with Ellsberg's warning last week that the Nixon Administration now stands at another critical turning point of Vietnam policy.

Same Problems Seen

"I think the Administration is facing many of the same problems that we faced in 1964," Mr. Ball said, "and the impression that is being given is not very far different from the impression that was given by the actions of the Johnson Administration in 1964."

"I would hope that the result of this whole very unhappy exercise is that there will be more candor on the part of the Nixon Administration."

Later he said, "they haven't got a great deal more time to get American troops out of this situation without a real blow-up in the United States."

Mr. Ball said that there had been no deliberate deception by the Johnson Administration and that President Johnson had been entirely honest in campaigning as a peace candidate in 1964.

"When he said he didn't want a wider war, he meant it, I'm convinced of this," Mr. Ball said.

At the same time, Mr. Ball justified his own public advocacy of the official view of the war in 1966, contrary to his private opposition to expansion of the hostilities that he was presenting in the Government's inner councils.

He said this was "exactly what any Government official must necessarily do if there is to be orderly government and not pure anarchy."

He did not think the papers presented a security issue.

"I haven't seen them all, of course, but I would think they present very little danger to the United States," Mr. Ball said. "On the whole I would suppose it was healthy to begin to get this story out so that the American public can really know what went on during this period."

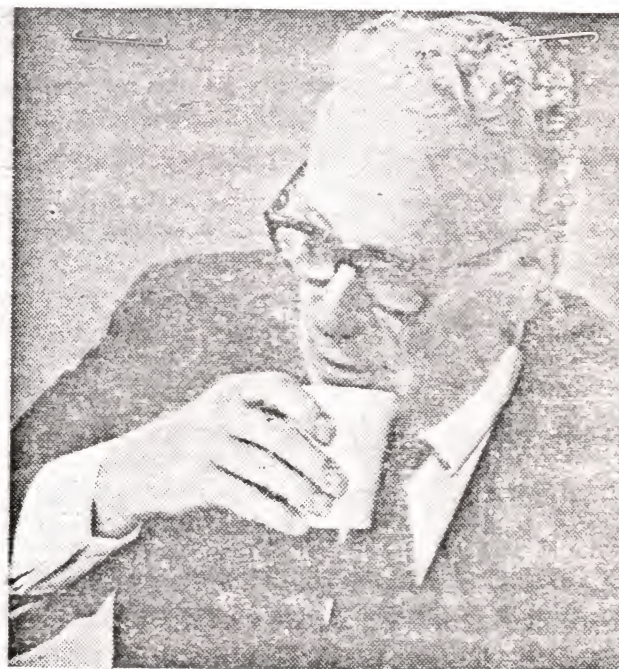
Time magazine reports in the issue that will reach newsstands tomorrow that former Secretary of State Dean Rusk warned President John F. Kennedy in 1961 not to send 8,000 American troops into Vietnam as Gen. Maxwell D. Taylor was advocating at the time.

The United States "could still walk away from Vietnam," Mr. Rusk told Mr. Kennedy in a cablegram, adding that if Gen-

eral Taylor's recommendation were followed, Washington "would be forced to see its commitments through."

According to Time, Mr. Rusk suggested that if the court approved publication of the Pentagon papers, the main lesson for Government officials would be not to write things down.

"My habit was that I did not go around writing a lot of memoranda," he recalled. "I've been in Government long enough to know it is not a good idea to spread papers all over the landscape."



The New York Times/Patrick A. Burns
George W. Ball during his televised interview yesterday

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Ellsberg Says He Leaked Study; No Ruling Yet for Times, Post

W. W. [unclear] 1971

REC-74

MACLEK

Surrender In Boston to U.S. Attorneys

BOSTON (AP) Dr. Daniel Ellsberg surrendered to federal authorities today and told about 150 persons he had provided the New York Times with secret Pentagon papers and is "prepared for all consequences."

Ellsberg is charged in federal warrants with unauthorized possession of the top-secret documents and failure to return them. The warrants were issued late Friday and federal agents have been seeking him since then. Ellsberg's lawyers said Saturday that he would give himself up today.

Given to Senators

Ellsberg told a group of newsmen and cheering well-wishers outside Boston's federal court building that in the fall of 1969 he had presented the Senate Foreign Relations Committee "information contained in the so-called Pentagon papers."

He said, "After 9,000 more Americans had died, I could only regret that I had not at that same time released that information to the American public."

"I have done so now."

He said, "I took the action on my own initiative. I felt as an American citizen—as a responsible citizen—I could no longer cooperate with concealing this information from the American people. I am prepared for all consequences."

"Wouldn't you go to prison to help end this war?" he asked.

Arm-in-arm with his wife and carrying a briefcase, Ellsberg then went into the building to give himself up to U.S. Atty. Herbert F. Travers shortly before 10 a.m.

Ellsberg, 40, a former Pentagon researcher and currently a research associate at the Massachusetts Institute of Technology in Cambridge, had been in hiding since June 16, when he was identified as the source of the secret papers by Sidney Zion, a former Times reporter.

Times Named No Source

Ellsberg had talked by telephone to friends since then and appeared on the Walter Cronkite CBS television news show. It was not revealed where the show was filmed and Ellsberg at that time did not say whether he had supplied the documents to the Times.

Ellsberg said today he was in Cambridge, Mass. the entire time.

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FINAL EDITION

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The warrant for Ellsberg was issued in Los Angeles, where a grand jury was investigating the leak of the documents.

Ellsberg was not charged with giving the papers to the Times, and the newspaper had not disclosed the source.

Ellsberg's attorneys said Saturday they had asked the FBI to "refrain from their efforts to apprehend him" in light of his decision to surrender today.

However, a spokesman for the FBI said the search was continuing through the weekend.

His lawyers had said Ellsberg would surrender immediately if the government would release him on personal recognizance, but the government refused.

Asst. U.S. Atty. James N. Gabriel said personal recognizance was out of the question for Ellsberg "under the circumstances."



Dr. Daniel Ellsberg holds his wife, Patricia, as they make their way through a crowd outside the Boston Federal Building where he surrendered.

—United Press International

11/12/55,

War File Decision Imminent

Press Ruling Due Today as Court Quits

By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court is expected to complete its term today with a decision settling the right of the press to publish, or the power of government to suppress, the Pentagon papers.

After taking under advisement over the weekend the cases of the United States v. The Washington Post Co. and The New York Times Co. v. The United States, the court convenes at 10 a.m. today to deliver decisions and, according to an announcement last week, recess for the summer "unless otherwise ordered."

Several other issues await a decision from the highest court. They include the petitions of as many as 150 of the nation's 669 death row inmates, the constitutionality of government financing that helps religious education, the conscientious objector case of Muhammed Ali and the constitutionality of less-than-unanimous criminal jury verdicts, among others.

If the justices are unable to deliver full opinions in the newspapers' case today, some observers see the likelihood of a ruling followed later by written opinions explaining the reasoning of the majority and dissenters.

That was the course taken on such other rare occasions as the Julius and Ethel Rosenberg case in 1953 and the Little Rock school desegregation crisis of 1958, when the court expedited its ruling but needed more time to spell out the controlling principle of law.

The newspaper case, in which The Post and The Times contend that First Amendment freedoms already have been eroded by a series of court-imposed restraints, marks the first time in history that even temporary injunctions have been issued against the press because of government claims of danger to national security.

The dispute, which began only two weeks ago, rocketed through the federal courts and overtook the justices just as they were trying to complete a term that already had been packed with major decisions, and often bitter controversy, on civil rights, crime and other vital matters.

The Times has been enjoined since June 15 and The Post since June 19 from printing more articles in series about the top-secret 47-volume Defense Department history of decision-making on Vietnam since World War II.

Two district judges, one in Manhattan and the other in Washington, have rejected Justice Department pleas for injunctions after open and secret hearings, but the papers have been stayed from publishing under interim orders.

The latest such order, from the high court itself, would have permitted both newspa-

pers to publish portions of a projected series based on the secret documents. But the limited order excluded certain documents listed by the government as still in contention on the issue of danger to national security. The newspapers have declined to resume their series under these conditions.

Attempts to predict the court's decisions often have

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proved futile. But the justices have already taken and announced two key votes in the case that suggest their outlook.

On Friday, four justices declared that they voted to ignore the case altogether except to free both newspapers immediately from any remaining obstacles to publishing. And on Saturday the court disclosed a 6-to-3 vote against the government's request to hold part of the day's oral argument in secret.

Thus the swing votes appear to be with the two justices—Potter Stewart and Byron R. White—who voted for the government in its bid for a high court hearing but against its

plea for an unprecedented secret session.

Although The Post and The Times might prevail if they pick up the vote of either Stewart or White, the more far-reaching question of the grounds for the decision has perhaps greater importance.

The American Civil Liberties Union, which has played a friend-of-the-court role in the case, has asked the justices to reject the injunctions on the basis of standards that will make such injunctions harder to obtain in the future.

The justices who vigorously opposed a hearing in the press cases—and who showed no signs of budging during Saturday's unusual 2¼-hour oral argument—are Hugo L. Black, William O. Douglas, William J. Brennan Jr. and Thurgood Marshall. Voting for a closed hearing were Chief Justice Warren E. Burger and Justices John M. Harlan and Harry A. Blackmun.

Action is expected today in the court's 150 death penalty cases because the court has given no indication since May 3 of its view of the claim that capital punishment is "cruel and unusual punishment" forbidden by the Eighth Amendment.

On May 3 the court ruled, 6 to 3, that the methods used in capital cases—a single trial on the issues of guilt and punishment and no demands for more precise instructions to the jury on the penalty—are constitutional.

The ruling left many of the nation's condemned prisoners with the Eighth Amendment as their main hope. Maryland joined the petitioners by asking the court to decide, in a case from Montgomery County, whether the amendment applies in a rape case in which the rape victim's life is neither taken nor endangered.

Several alternatives appear open to the court. It could call for review of a case or cases involving the punishment question. Or it could refuse to consider the issue, sending some cases to lower courts for proceedings on other claims. Or it could take no immediate action, putting the issues on the agenda for the fall term.

Critical questions of church-state relations are awaiting decision in government subsidy cases involving church-connected schools in Connecticut, Pennsylvania and Rhode Island.

In the Connecticut case, the challenge, under First Amendment religious liberties, is against federal aid under the 1963 Aid to Higher Education Act for college "bricks and mortar" for classrooms and buildings not used for worship.

The Pennsylvania case tests the state's tobacco tax-supported program of reimbursement to private elementary and secondary schools for teachers' salaries and other

costs in the "secular" courses of mathematics, modern foreign languages, physical science and physical education. Also involved—and thrown out by a lower court without a hearing—is a claim that public money is unconstitutionally being channeled into racially segregated private schools.

A similar aid program in Rhode Island was overturned by a court there, partly on grounds that it would create forbidden government-religion "entanglements." The central question in all the cases is whether the aid violates government neutrality principles in its purpose and primary effect.

Muhammad Ali, the onetime heavyweight champion boxer who was indicted for resisting induction into the Army under the name Cassius Clay, is contending that the government's hostility and the wrong legal standard prevented it from recognizing the sincerity of his religious objection to war, which he developed after his conversion to the Black Muslim religion.

Criminal cases from Louisiana and Oregon are ripe for decision on whether a defendant has a constitutional right to a unanimous jury verdict for conviction.

Louisiana permits conviction—or acquittal—on the vote of 9 of the 12 jurors and Oregon allows a 10-to-2 verdict. Experts consider that hung juries tend to help defendants, although Black Panther leader Bobby Seale might have been acquitted outright in New Haven recently under the Oregon rule.

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GAZETTE 6-27 NX
 WITH COURT

GLEN BURNIE, MD. (UPI)--A SUBURBAN BALTIMORE BIWEEKLY NEWSPAPER SAID SUNDAY IT RECEIVED COPIES OF STATE DEPARTMENT DOCUMENTS ON THE VIETNAM WAR FROM THE SAME MAN WHO GAVE THEM TO THE CHICAGO SUN-TIMES.

THE MARYLAND GAZETTE SAID IN A STORY BASED ON THE DECLASSIFIED DOCUMENTS THAT IT GOT THEM FROM ROBERT B. JOHNSON JR., A WEST POINT GRADUATE WHO SAID HE BECAME DISILLUSIONED WITH THE ARMY AFTER SERVING IN VIETNAM AND RESIGNED IN 1965.

JOHNSON SAID HE GAVE COPIES OF THE SAME DOCUMENTS TO THE SUN-TIMES BUT WOULD NOT SAY WHERE HE GOT THEM.

JOHNSON, OF CAPE SAINT CLAIRE, MD., IS NATIONAL COORDINATOR OF THE CITIZENS' COMMISSION OF INQUIRY INTO U.S. WAR CRIMES IN VIETNAM.

THE GAZETTE QUOTED DOCUMENTS WRITTEN BY ROGER HILSMAN, FORMER ASSISTANT SECRETARY OF STATE FOR THE FAR EAST, WHICH RECOMMENDED IN 1963 THAT THE UNITED STATES MIGHT ASSIST IN THE OVERTHROW OF THE DIEM REGIME IN SOUTH VIETNAM.

HILSMAN, WHO WORKS AT COLUMBIA UNIVERSITY AND LIVES IN CONNECTICUT, TOLD THE GAZETTE IN AN INTERVIEW THAT THE RECOMMENDATION WAS NOTHING MORE THAN A CONTINGENCY PLAN REQUESTED BY THEN SECRETARY OF STATE DEAN RUSK.

HILSMAN QUOTED RUSK AS SAYING, "I WANT YOU TO HAVE YOUR PEOPLE MAKE UP A LIST OF ALL THE CRAZY THINGS DIEM MIGHT DO AND ALL THE CRAZY THINGS WE MIGHT HAVE TO DO IN RETURN."

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 ELLSBERG 6-27 BH1
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BY JOHN CUNNINGHAM

BOSTON (UPI)--DR. DANIEL ELLSBERG WAS IN HIDING SUNDAY WHILE FEDERAL OFFICIALS CONDUCTED WHAT ONE OF HIS LAWYERS DESCRIBED AS A "MACABRE MANHUNT" FOR THE FORMER PENTAGON OFFICIAL.

LEONARD B. BOUDIN, A VISITING PROFESSOR AT HARVARD LAW SCHOOL, SAID PLANS STILL CALLED FOR ELLSBERG TO SURRENDER HIMSELF TO U.S. ATTORNEY HERBERT TRAVERS IN BOSTON MONDAY AT 10 A.M. IN THE FEDERAL BUILDING TO FACE CHARGES OF ILLEGALLY POSSESSING AND FAILING TO RETURN DOCUMENTS FROM A TOP SECRET STUDY OF THE VIETNAM WAR.

ELLBERG, 40, A SENIOR RESEARCH ASSOCIATE AT THE CENTER FOR INTERNATIONAL STUDIES AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, HAS BEEN MENTIONED AS THE POSSIBLE SOURCE WHO LEAKED COPIES OF THE 47-VOLUME WORK ON U.S. DECISION MAKING IN INDOCHINA TO THE NEWS MEDIA.

BOUDIN, REPRESENTING ELLSBERG ALONG WITH HARVARD LAW PROF. CHARLES B. NESSON, EXPRESSED CONFIDENCE ELLSBERG WOULD BE ABLE TO EVADE AUTHORITIES SEARCHING FOR HIM. HE SAID THE JUSTICE DEPARTMENT IS ACTING IN A "VERY UNLAWYER-LIKE MANNER" BY PRESSING THE SEARCH FOR ELLSBERG DESPITE HIS INTENTION TO SURRENDER.

"I REALLY THINK THE WHOLE DAMN THING IS SCANDALOUS," BOUDIN SAID. "WE MADE A VERY PLAIN LAWYER-LIKE PROPOSAL TO PRODUCE DR. ELLSBERG TOMORROW AT 10 A.M. AND INSTEAD THEY'RE ENGAGED IN THIS MACABRE MANHUNT WHOSE ONLY PURPOSE IS TO CREATE HYSTERIA."

BOUDIN DECLINED TO GIVE ANY HINT AS TO ELLSBERG'S WHEREABOUTS.

BOUDIN HAD OFFERED SATURDAY TO PRODUCE ELLSBERG IMMEDIATELY IF THE GOVERNMENT COULD GUARANTEE HIS RELEASE WITHOUT BAIL. HOWEVER, SPOKESMEN FOR THE JUSTICE DEPARTMENT IN WASHINGTON SAID THE OFFER WAS REJECTED BECAUSE OF THE "NATURE OF THE CRIME."

FOLLOWING THE REJECTION, NESSON SAID "IT CREATES THE SUSPICION THAT THE FBI IS MORE INTERESTED IN SOME NONSENSE ABOUT A HIGHLY PUBLICIZED ARREST THAN THEY ARE ABOUT HAVING MR. ELLSBERG."

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WASHINGTON CAPITAL NEWS SERVICE

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BOUDIN SAID VOLUNTARY SURRENDER IS A COMMON PROCEDURE IN SUCH CASES. HE NOTED THAT SUCH A PROCEDURE WAS FOLLOWED WHEN HE DEFENDED ~~DR. BENJAMIN SPIRO~~ ON A CHARGE OF CONSPIRACY TO AIDE AND ABET DRAFT EVADERS.

"WE WILL CONTINUE TO BEHAVE IN A LAWYER-LIKE MANNER," BOUDIN SAID, "AND WE HOPE THE DEPARTMENT OF JUSTICE WILL CHANGE ITS TACTICS."

ASSISTANT U.S. ATTORNEY JAMES N. GABRIEL REAFFIRMED THE GOVERNMENT'S POSITION SUNDAY, SAYING "WE'RE UNABLE TO SUSPEND THE EFFECT OF A VALID ARREST WARRANT ISSUED BY A COURT OF COMPETANT JURISDICTION ON THE WEST COAST."

AN ARREST WARRANT FOR ELLSBERG WAS ISSUED FRIDAY AND ANNOUNCED BY THE JUSTICE DEPARTMENT IN WASHINGTON EARLY SATURDAY.

ELLSBERG, A FORMER CONSULTANT TO THE RAND CORP. OF SANTA MONICA, CALIF., WHICH HELPED THE DEFENSE DEPARTMENT PREPARE THE MASSIVE STUDY, DROPPED OUT OF SIGHT SHORTLY AFTER THE NEW YORK TIMES PRINTED REPORTS BASED ON THE STUDY BUT SURFACED LAST WEDNESDAY NIGHT ON A CBS TELEVISION INTERVIEW TAPED AT A SECRET LOCATION.

THE COMPLAINT AGAINST ELLSBERG SAYS HE POSSESSED "SEPARATELY BOUND SETS OF 47 AND 18 VOLUMES...OF XEROX COPIES OF A STUDY OF 'UNITED STATES VIETNAM RELATIONS FOR THE PERIOD 1945-1967'." ALL BUT ONE VOLUME WERE CLASSIFIED TOP SECRET.

THE ARREST WARRANT AND COMPLAINT WERE SIGNED BY U.S. MAGISTRATE VENETTA S. TASSOPULOS IN LOS ANGELES, WHERE A FEDERAL GRAND JURY IS INVESTIGATING THE DOCUMENTS LEAK AT THE REQUEST OF THE JUSTICE DEPARTMENT.

AFFIDAVITS ACCOMPANYING THE COMPLAINT WERE SIGNED BY TWO RAND CORP. SECURITY OFFICIALS AND ELLSBERG'S FORMER WIFE, CAROL.

THE JUSTICE DEPARTMENT SAID THE CHARGES AGAINST ELLSBERG CARRY A MAXIMUM PENALTY OF 10 YEARS IN PRISON AND A \$10,000 FINE ON CONVICTION.

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Battle Brewing in Senate Over Who Gets Pentagon Papers

BY JAMES DOYLE
 Star Staff Writer

A new fight over the "Pentagon papers" will unfold in the Senate this week.

Two massive studies on the Vietnam war, one detailing the August, 1964 actions of the U.S. ships in the Tonkin Gulf, are to be delivered to the Senate from the Pentagon tomorrow.

Despite the continued revelation of some of their contents by a growing number of newspapers, the documents are classified, and just how the Senate will use them remains a point of controversy in the cloakrooms.

Eventually, there is to be a public inquiry into the origins of the Vietnam war, based at least in part on what a study of the documents reveals.

Stennis vs. Fulbright

In the meantime, a jurisdictional dispute is simmering over who should be given a chance to do much of the studying.

The Armed Services Committee under the leadership of Sen. John C. Stennis, D-Miss., has been arguing privately that a study sent to Capitol Hill from the Pentagon should be referred to it—the committee that exercises oversight of the military and the Pentagon budget.

The Foreign Relations Committee, led by Sen. J. William Fulbright, D-Ark., is arguing that a study which reveals American foreign policy toward Southeast Asia in a new light should be referred to his body.

Majority Leader Mike Mansfield says that while the Pentagon papers would see by

their very name to be a matter for Stennis' group, "I have heard that their contents are seven-eighths diplomatic and only one-eighth military."

Mansfield hopes to avoid a jurisdictional dispute by reaching an informal agreement between the contending parties.

"I hope they recognize the great responsibilities that devolve upon the members," he said yesterday. "I hope we can bring about a blending of the two points of view, and that personal views will be subordinated to the national interest."

Fear of the Fights

What Mansfield's statement hinted at the possibility that the Pentagon papers will become befogged in ideological differences between Democrats and Republicans, hawks and doves, those who want to cut military spending and those who want to increase it, those who want to reduce presidential power and those who want to maintain it.

The majority leader has succeeded in arranging a tentative agreement that when public hearings begin, they will be conducted by an equal number of Democrats and Republicans, half from each of the two committees concerned.

But even that plan may fall apart. The hearings are not planned until some time in the fall, and Stennis and his allies reportedly are unwilling to take part in combined committee hearings until an agreement is worked out on who would chair the hearings.

Fulbright is senior to Stennis and would be the chairman under the tradition of seniority

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 New York Post _____
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 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date **JUN 27 1971**

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rule. It is unlikely to be followed in this case.

Fulbright told reporters on Wednesday that he has been asking the Pentagon for the Vietnam study for more than a year, and that the Armed Services Committee had never expressed any interest in seeing the documents.

He said one purpose of public hearings out of the study would be to improve relations with the executive branch.

"What about improving relations with the Armed Services Committee?" a reporter asked, to laughter. Fulbright scowled.

Stennis has had little to say about the Pentagon papers. For one thing, managing the draft extension bill, arguing against a number of riders, and thwarting a filibuster before it got started.

Stennis has had little time to devote to the controversy over the top secret documents, and his staff has not expressed great interest according to those involved in the handling of the Senate's copies.

Staff members of the Foreign Relations Committee, on the other hand, have been preoccupied with planning for studying the papers quickly in order to prepare for hearings.

Fulbright's committee may go ahead with its own hearings in the fall if an agreement on combined hearings falls apart.

One of the problems with the documents is the question of where they will be studied. It is still to be decided by Sens. Mansfield and Hugh Scott, the minority leader.

Last week the leadership ruled that the documents should be made available to all senators, but that they should not be taken from their assigned place, and that no notes should be taken or copies made.

Staff members have pointed out that these rules are not practical if detailed hearings are to be held on their contents.

Arrangements must be made to place the many volumes in a secure area that can serve as a combination reading room and study hall, they say.

Had Documents

Some staffers feel that the senators will soon become so frustrated at waiting to see the documents that they will suspend the rule against making copies of crucial pages.

For several weeks the Foreign Relations Committee has had parts of the Pentagon papers, and there is speculation they were supplied to them by Daniel Ellsberg, whose former wife signed an affidavit last

week quoting the former Pentagon aide as saying he would make top secret papers available to people such as Fulbright.

Fulbright and his staff looked over the papers, but did not see in them the kind of sensation-making headlines that were caused when the government took the New York Times to court for publishing some of the material.

On the other hand, committee sources, both senators and staff members, reject the suggestion that the newspaper stories of the past two weeks have somehow distorted the history of the war by emphasizing discrepancies in public and private statements, and by highlighting planning paper that outlined escalations of the war before they were announced.

Mansfield, who has not seen the unpublished portions of the Pentagon papers but who has long been a student of Southeast Asia and a dissenter on the war, said in an interview that the possibility of distortion exists because, "It is my understanding that these were tentative suggestions and not the ones that were considered in final form. We will have to proceed cautiously in examining this history."

Fulbright noted that he had not had a chance to examine all of the published reports but that he had read most of them.

"What I've read, particularly pertaining to the Tonkin Gulf incident, is consistent with what our own past inquiries have shown," he said.

"So far as I can see, the released portions are not a distortion. I've read practically everything. I don't see where

they get this business that it's distorted," Fulbright said.

Another source, a Johnson administration aide who dealt with National Security Council memoranda when he was in the White House, made the same point. "It all sounds pretty familiar," he said.

One reason some former officials are talking about historical distortion is that the Pentagon papers are just that — documents from the Defense Department collected by people who did not have full access to records at the White House, State Department or Central Intelligence Agency.

When the documents arrive on Capitol Hill tomorrow, the Senate's copy, running to more than 50 typescript volumes, will be delivered by

Pentagon aides to the Capitol Building office of Sen. Allen Ellender, Room S-125.

As Senate president pro tempore, Ellender was chosen by Mansfield and Scott as a good neutral recipient for the documents.

But once newsmen and photographers leave, the volumes will be taken to the second floor offices of the secretary of the Senate, an ornate suite of offices just off the Senate floor.

Here they will be in the custody of Francis R. Valeo, the secretary, until the joint leadership can negotiate a plan acceptable to Stennis, Fulbright and others on where to place the volumes and how to maintain control over their use.



SEN. J. W. FULBRIGHT



SEN. JOHN STENNIS

Letters to the Editor

The Press and U.S. Security

SIR: Some years ago Ray Bradbury wrote a story, "A Sound of Thunder," in which on a safari into the past a hunter in a moment of abject terror unwittingly trod on a butterfly and thereby set in motion a chain of events that a million years later, in his own time, brought to power a menacing dictatorship.

For a much more complex set of reasons, the New York Times has also been trodding unwittingly on butterflies while, at first, it slunk through grasslands and jungles to harass its imagined quarry, and then, more recently, stood up and engaged the foe openly with its main-force troops. Now, after careful preparations in elaborate secrecy, the Times has sprung a major ambush whose ultimate casualties also will not be limited to the soundless deaths of broken butterflies.

Since I'm faced in this situation with awesomely intricate chains of causes and effects I can make only

tentative estimates of consequences and assign them high degrees of uncertainty. With that firmly in mind I suggest that the chief casualty of the Times' ambush — and one never intended by the Times — is social democracy itself, which has probably suffered a grievous wound. If with this blow the Times-congressional-university axis succeeds eventually in preventing further use in Indochina of American air and naval forces, then social democracy will probably be overrun and massacred, not only where it is feeble, as in Indochina, or only defended by scattered partisan forces, as in South Korea, Poland, Taiwan and Czechoslovakia, but also where it is guarded by tough and determined regulars, as in Finland and Yugoslavia. If so, then even Israel and Sweden would hear the dark totalitarian menace edge closer to the gates.

If former President Johnson and his chief aides really lied to the American people, the Congress and even the National Security Council, most of them have already been punished by exile from leadership, and will suffer more from dishonor.

Similarly, if the New York Times, which has done so much to advance the cause of social democracy in this country, especially for the blacks, has inflicted — with characteristically tendentious exploitation of information about the Indochina war — still another, and this time far bloodier, wound in social democracy elsewhere, then it too should be punished. Moreover, this apparently consistent use of half-truths about the Indochina war ("An error is the more dangerous the more truth it contains"—Amiel) should not be excused because, in the latest instance, the Times probably believes it has fired only on executive arrogance and deceit.

It seems to me that an appropriate punishment for consistently tendentious reporting would be the emergence of a newspaper that rivals the Times in resources and in the scope of its coverage — and surpasses the Times in devotion to the truth and hence in the quality of its reporting and comment.

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On the issue of freedom of the press versus the security of those who throughout the world are defending that freedom (and is that not a partial, indirect definition of the higher abstraction called "American national security"? I believe the most critical questions concern both the Times' possession and its publication of certain documents, such as formerly enciphered cables, that indirectly might lead to the exposure and hence the death, torture or imprisonment of intelligence sources.

If a single source has been significantly endangered, then I for one hope this democracy has laws that permit the jailing of those responsible, even if among them be the publisher of the New York Times.

Robert McClellan.

The Washington Post _____
Times Herald _____
The Washington Daily News _____
The Evening Star (Washington) _____
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Daily News (New York) _____
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The New York Times _____
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THE PURLOINED PENTAGON PAPERS

President Richard M. Nixon has given Congress copies of the world-famous, still top-secret 47-volume report on the Pentagon study of the Vietnam war.

The cases involving the N.Y. Times' and Washington Post's publication of some of this material are before the U.S. Supreme Court.

What are the chief rights and wrongs of this affair?

Of one thing, we are convinced: that whoever leaked these secret documents to these newspapers ought to be prosecuted to the limit of the law.



Ellsberg

McNamara

A Massachusetts Institute of Technology research person named Daniel Ellsberg is all but boasting that he did it.

Ellsberg does not like U.S. participation in this war. If he did leak the documents, that means he decided to play God and do his worst to wreck the U.S. war effort, and too bad about the President's plan (now a bit ahead of schedule) to pull out our forces without betraying our Saigon allies to Communist butchers.

Ellsberg is scheduled to give himself up Monday, and how about an early trial?

And what of Robert Strange McNamara, who, as Defense Secretary in 1967, ordered this Pentagon study?

Should not a hatful of tough questions be put to Mr. McNamara? And should not Roger Hillsman, now a talkative Columbia professor, be asked urgently to talk under oath of his actual role in the John F. Kennedy administration maneuvers that somehow ended in the 1963 murder of South Viet President Ngo Dinh Diem?

And what about—

THE NEWSPAPERS

—which published interpretations of and direct quotations and other excerpts from an admittedly incomplete Pentagon report? We think the fact that both the N.Y. Times and the Washington Post are longtime Nixon-haters and Viet-war doves is material to the case.

It seems likely to us that their editors examined the material purloined by Ellsberg or whomever, and reached the conclusion, influenced by wishful thinking, that its publication (a) would endanger no American lives in Vietnam but (b) would somehow force a faster Viet pullout and injure the President politically.

Whether thus taking it on themselves to declassify secret documents was illegal is a question which only the courts can decide.

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THE NIXON ADMINISTRATION

—in the case strikes us as admirable. (Yes, THE NEWS long has favored Mr. Nixon in most respects.)

The material that reached print before the courts cracked down was making Presidents Kennedy and Johnson look like a couple of deceitful war merchants. By contrast, President Nixon was looking better and better. Yet the Nixon administration cooperated wholeheartedly with the Justice Department's law-required move to halt publication of material considered damaging to the national security. Thereby, the administration offended at least two powerful newspapers, and let itself become the target of wild and false but widely believed charges that it was trying to censor the press. All this, we feel, bespeaks courage and integrity in the Nixon administration.

There is much talk of—

CONGRESSIONAL ACTION

—that some feel should grow out of this case.

Our belief is that the congressional probe urged by the esteemed Arthur J. Goldberg may be advisable if and after Mr. Nixon gets our fighting men and war prisoners home, but could be very dangerous before then.

It may be, too, that Congress should enact some new laws on secret government documents, how long they are to remain secret, who may and may not declassify, etc.

But in that case, we are convinced, Congress' prime duty would be to avoid diluting the First Amendment's guarantee of freedom of the press in any way.

A free press, despite occasional abuses of its freedom, is essential in a free nation. Congress would curtail that freedom beyond national-security requirements only at extreme peril to our continued existence as a free nation—including the continued existence of Congress itself.

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Ruling on Archives Delayed by Court

Times and Post Kept Under Ban Until Tomorrow

By LYLE DENNISTON
 Star Staff Writer

The Supreme Court worked into early yesterday evening to decide the right of newspapers to publish stories about the secret "Vietnam archives," but finished without announcing the result.

It appeared that the court would take no action over the weekend, thus keeping in effect today and tomorrow morning a partial ban on stories in the New York Times and the Washington Post.

After hearing two hours and 12 minutes of arguments by attorneys yesterday, the justices spent several hours in private study on the two test cases. It was not clear whether any of the justices would be at the court today.

Session Due Tomorrow

The court will hold a public session at 10 a.m. tomorrow that was previously scheduled as the last day of the current term. A decision in the newspaper cases could be announced then with other final rulings.

Four of the nine justices have previously made it plain they oppose any court order banning news stories. They are Justices Hugo L. Black, William J. Brennan Jr., William O. Douglas and Thurgood Marshall.

A fifth justice, Potter Stewart, commented repeatedly yesterday that the cases appeared to be limited to issues of fact, and he reminded the government attorney that, un-

less, the court overruled past decisions. Advance bans on newspaper stories would be "presumed unconstitutional."

Stewart and the other four justices who have taken no firm public position on the power of a court to stop a news story did not reveal their positions during the hearing.

The partial ban on Times and Post stories was imposed by the court Friday and will remain in effect until there is a final decision. It forbids stories that mention parts of the study that are itemized in two government documents offered to the court under seal.

Yesterday, Solicitor Gen. Erwin N. Griswold, the government attorney, conceded that the Justice Department had asked the court to keep too much of the still-secret Pentagon war study out of the newspapers.

Even so, he argued that a strict curb should be put on stories about the 47-volume study, because full disclosure would endanger attempts to end the war and to get U.S. prisoners released.

Griswold told the court he had found "too broad" a list submitted Friday of parts of the Pentagon study which the government wants put into the special protected category.

Those parts could not be discussed or printed in newspapers, unless, at some future time, the government chose to remove their "top secret" classification.

The solicitor general, who presented over an hour of argument, said he had "delegated" to the State and Defense departments and the National Security Agency the job of picking out parts of the study that, if published, could lead to "grave and irreparable harm to national security."

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 The Washington Daily News _____
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 The Sunday Star (Washington) _____
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State Dept. Sought More

That list, along with a 22-page list of similar items drawn up earlier, went to the court at 5 p.m. Friday. That night, Griswold said, "The State Department called and said it wanted to add four additional items," but he said it was after the deadline set by the court.

Even without those added items on the list, Griswold said, "I found it much too broad."

Illustrating what he meant, Griswold said there was a statement at the bottom of the latest list which said "any information relating" to 13 categories—which he did not disclose—should be barred from publication. "I think that is too broad," he said.

At another point, he said he was pleading primarily for the court to protect "10 items," but made clear that at least one "item" was a major segment of the study. He said that item covered four volumes out of the 47, and he did not indicate he felt that was too broad too keep secret.

'Properly Classified'

Each of the 10 items, Griswold said, is "properly classified 'top secret.'" The two lists of items prepared by the government were stamped at the top and bottom of each page with the words "top secret."

Each page listed the part of the study considered especially sensitive and gave what was described as a "rationale" for it to be protected from disclosure.

In answer to a question, Griswold said he was not necessarily making the argument that courts should bar from publication any government documents marked secret, although he said there were officials in the administration who think that.

'Right to Function'

The solicitor general said the key issue in the fight over stories about secret documents was "the right of the government to function," and commented:

"The 1st Amendment (guaranteeing a free press) was not intended to make it impossible for the executive to function or to protect the national security."

He said the Vietnam archives contain information which, if published, "will affect the progress of the termination of the war in Vietnam, and will affect negotiations like the SALT (strategic arms) talks and will affect the return of our prisoners of war."

Already, Griswold said, "people tell me channels of communication on which great hope had been placed have been dried up." He did not elaborate.

Stresses Mideast Concern

Stressing particularly his "concern" about the impact of newspaper disclosures on U.S. negotiations over disarmament in the Middle East, Griswold said that "in the present parlous state of the world . . . only by success (in negotiation) can we hope our children and our children's children will have a world to live in."

He urged the justices to rule that newspapers may be ~~banned by court order from~~

publishing stories that would cause "grave and irreparable harm to diplomacy" now in process or in the future. By "future," he said, he did not mean as far ahead as the 21st century, but he meant some time beyond "tomorrow morning."

Griswold's argument ran twice as long as that of either newspaper's attorney because the government is involved in both cases.

As the hearing began, Chief Justice Warren E. Burger said the court had rejected 6 to 3 a request by Griswold that part of the hearing be secret.

Burger said he and Justices John M. Harlan and Harry A. Blackmun would have permitted a "limited amount of closed-door argument."

The Times' lawyer, Yale professor Alexander M. Bickel, spent much of his half-hour spelling out the kind of impact on national security he said a story would have to produce to justify a court order against it.

Sets Conditions

Although he said he had "enormous difficulties" trying to find specific words for a formula, he said the government should be able to block a news story only if it could prove two things:

That there was some "feared event" that might occur of such magnitude that it was clear the "public safety" would be immediately at stake.

That the "feared event" would come about as a "direct and immediate" result of the newspaper story.

Asked by Justice Byron R. White if he felt newspaper publication of any document in the Vietnam study would meet that standard, Bickel replied that it would not.

He said if there were evidence to that effect, "it surely should have turned up by now."

Throughout its case against the Times, Bickel said, the government had merely "surmised" that publication of the remaining archives would injure the national security.

Link 'Speculative'

"The link they suggest (between publication and injury) is always speculative," he said.

Justice Stewart, who asked more questions than any of the other justices, repeatedly pressed Bickel to say how far his suggestion would permit a newspaper to go.

Finally, Stewart suggested a "hypothetical" in which the court, looking at the Vietnam documents, "found something that we were absolutely convinced would sentence to death 100 young men" whose only offense had been to be 19 years old and in the draft.

Stewart asked, "What should we do?"

In that situation, Bickel conceded, "It would be almost impossible to resist the inclination to conclude that that not be published." But he said the government's case came nowhere near that situation.

Chief Justice Burger then offered a different "hypothetical"—whether courts could block a story that "discloses the identity of a diplomat negotiating for the release of our prisoners of war (if) this would delay their release."

To that, Bickel said, "I think that is a risk the 1st Amendment signifies this society is willing to take."

The Post's lawyer, William R. Glendon of New York City, said the 1st Amendment should always prevail against a government challenge based solely on "possibilities and conjecture."

'Case of the Jitters'

"I think maybe the government does have a case of the jitters here, but that does not justify stopping the press," he argued.

Several times, Burger pressed Glendon to discuss what the chief justice called the government's right to protect its sources of information from disclosure. At one point, Burger protested that newspapers were in court seeking to avoid revealing the sources of their information, and yet were unwilling to concede that privilege to the government.

Glendon replied that under the 1st Amendment, "I don't see any conflict . . . the government may forget that the interests of the government are the people's."

The Post attorney said the standard he would suggest to the court was that news stories could not be banned unless their publication would "so prejudice the defense interests of the U.S. or result in such irreparable injury to the U.S. that the 1st Amendment should be set aside."

'Serious Matter'

Griswold, in his argument, contended that the government was not suggesting that the 1st Amendment be "suspended." But he did say that while a case under the 1st Amendment was a "serious matter," he added, "so is the security of the United States."

Under questioning by Justice Marshall, Griswold said that even if the government

won its case against the Post and Times and they were barred from printing the protected parts of the Vietnam study, the government still would go ahead with a planned review aimed toward declassifying much of the study.

"The study is going to be made. I will do my best to see that the study is done and I believe I have the support of the entire administration," Griswold said.

He told Marshall it would be a "massive operation," but would be done. He agreed with a suggestion by Chief Justice Burger that a ruling against the government would mean the court had done the declassifying job for government.

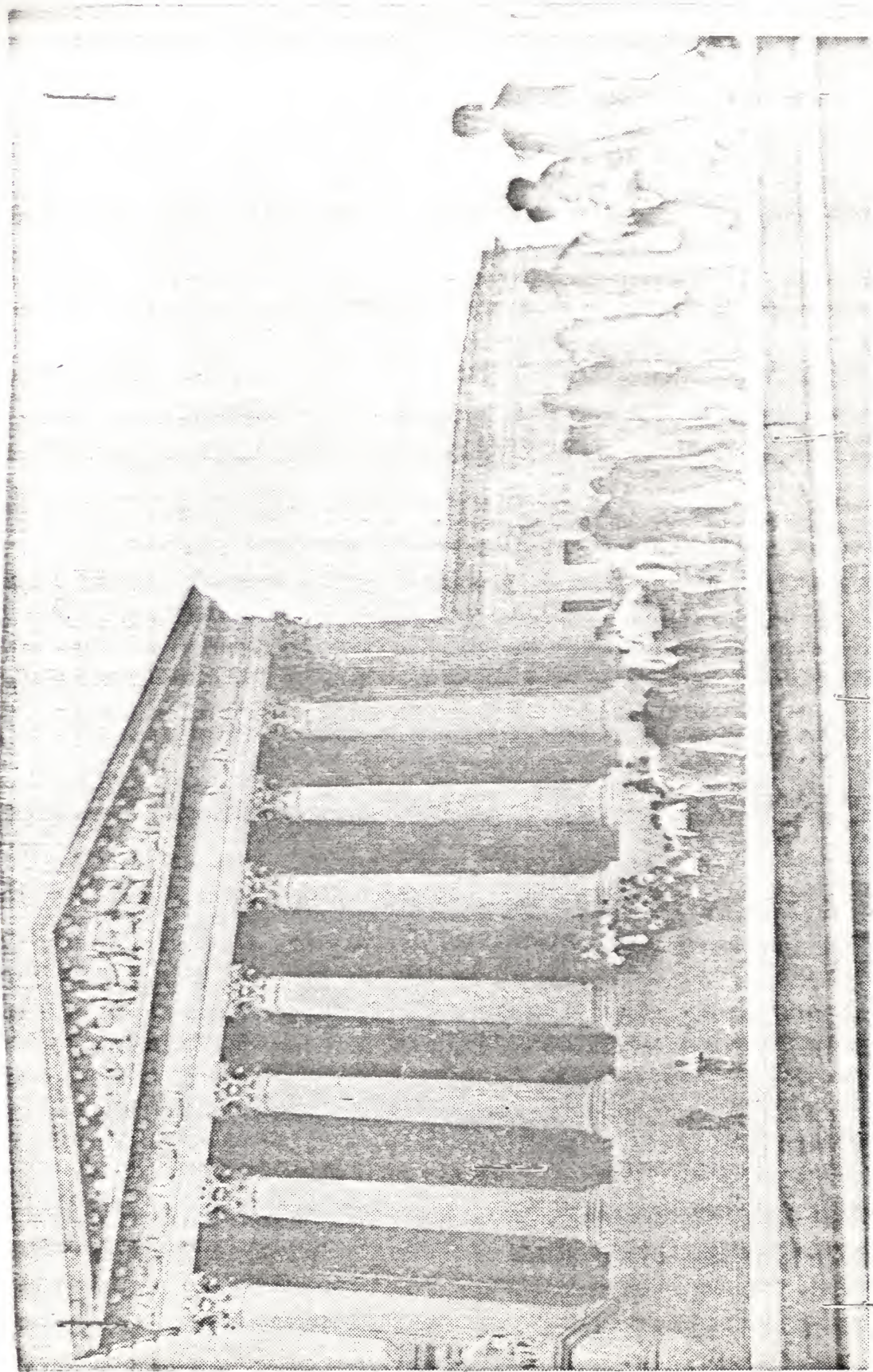
Griswold also suggested that the government might have difficulty if it brought any criminal case against those who leaked the study to the press if the court permitted the study's publication.

"I find it exceedingly difficult," he said, "to think that any jury would convict and any appellate court would affirm a conviction of a criminal offense for the publication of materials which this court has said could be published. I find it difficult to think that such a case should be prosecuted or could be effectively prosecuted."

A federal grand jury in Los Angeles is looking into possible criminal violations for release of the documents.



ATTY. ALEXANDER BICKEL
At Supreme Court



--United Press International

A line forms at the Supreme Court to hear the Pentagon papers debate.

The Press As

By William Greider

Adversary

By a Washington Post Staff Writer

THE STRUGGLE IS OLDER than the republic—government men telling newspaper men not to print something, warning that national security was endangered, and newspaper men ignoring the advice at their peril, even before they had the First Amendment to protect their freedom.

Gen. George Washington complained about leaks harmful to the Continental Army, although he did not seek any injunctions.

"It is much to be wished," Washington wrote in 1777, "that our Printers were more discreet in many of their Publications. We see almost in every Paper, Proclamations or accounts transmitted by the Enemy, of an injurious nature. If some hint or caution could be given them on the subject, it might be of material Service."

Gen. Sherman, during the Civil War, proposed the ultimate solution. He arrested one of Horace Greeley's battlefield correspondents from the New York Herald, charged him with spying and prepared to shoot him. President Lincoln's intervention saved the reporter's life, but it did not alter Gen. Sherman's opinion of the profession. When Sherman heard that three correspondents were killed by artillery, the general remarked, "Good, now we shall have news from hell before breakfast."

A Spectacular Leak

AT THE OUTSET of World War II, President Franklin D. Roosevelt ordered an investigation of the Chicago Tribune and the Washington Times-Herald for a truly spectacular leak—one which makes the current flap over Vietnam policy papers seem pallid by comparison. On Dec. 4, 1941, three days before the attack on Pearl Harbor, both of those newspapers printed the U.S. government's secret war mobilization plans. Despite the air of crisis and considerable fuss, the Tribune was neither enjoined nor indicted.

Frank C. Waldrop, who was then political and foreign editor of the Times-Herald, wrote of the conflict-in-purposes

some years afterwards when political passions had cooled:

"We saw it as simple truth that Mr. Roosevelt was out to lie the United States into war with Germany. And after we published, there were those who saw it as simple truth that we were deliberate traitors and intentional agents of the Nazis."

The truth in these matters, as Waldrop observed years later, is never quite so simple. Committed to isolationism, the Chicago Tribune and Times-Herald editors who broke the secret war plans believed the revelation might save Americans from being drawn into a long war in Europe in which they felt America did not belong.

The documents were leaked, however, by someone with the opposite purpose—"a general of high renown," according to Waldrop, who regarded war in Europe as inevitable but feared the United States was ill-prepared. The general felt the "Victory Program,"

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once published, would mobilize American public opinion in favor of greater armaments.

The editors, of course, did not know that war was only three days away. Neither did the general whose only purpose was bigger appropriations for the Army Air Corps. Nor did the isolationist senator, Burton K. Wheeler of Montana, who delivered the secret papers to the Tribune.

FDR ordered the Army and the Justice Department to investigate. The attorney general thought the Espionage Act had been violated. Yet nothing happened; the matter was allowed to drop quietly.

Perhaps, it was because the "Victory Program" dealt primarily with Europe and became moot when Japan attacked in the Pacific. Or, as Waldrop suggests, perhaps FDR himself closed the case when he discovered that one of his best commanders was the source of the leak.

The final irony, established years later by historians, was that this enormous breach of security by two newspapers had virtually no impact on events. When the German commanders read the U.S. plans to raise an army of 10 million men, they immediately urged Hitler to close the Russian front and shift their defenses to the Mediterranean and Western Europe. Hitler ignored their warnings.

A Series of Showdowns

OVER THE YEARS, the adversary relationship between press and government has been defined by occasional showdowns such as these—just as another important benchmark in the meaning of "freedom of the press" has been drawn by the current litigation over whether the press can print classified Pentagon documents on the origins of the Vietnam war.

The sporadic clashes, more than the ordinary harmony, provide the meaning for these words: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Now history records that the first newspaper publisher in America, one Benjamin Harris, was a bigot, an opportunist, an all-purpose scoundrel who also had bad news judgment. Some would insist, no doubt, that the tradition flourishes still.

Nevertheless, what Harris started in Boston in 1690 with the first edition of "Publick Occurrences Both Foreign and Domestic" was an historic departure—an unauthorized newspaper, printed without the consent or prior approval of the local government. It lasted one issue.

As media historian John Tebbel has recounted, the Bay Colony put Harris out of business, not because he was virulently anti-Catholic or because he "leaked" official secrets. The trouble was that Harris concocted his own secrets—wild stories about Indians and allied nations which were sure to damage the King's diplomatic relations.

Since nobody dreamed that a publisher would print such stuff without the government's approval, it was universally assumed that Harris's stories, true or false, were officially certified. To prove the contrary, the government had to seize the edition and destroy it.

There was a lesson in that—for the second publisher in America. When the Boston News-Letter appeared, it proclaimed in bold type: "Published by Authority." For the first half-century of American journalism, that was the dominant theme, "Published by Authority," meaning that the content met the prior approval of the government.

The 'Radical' Franklins

THE EXCEPTIONS, however, defined the future. James Franklin, Ben's older brother, started a monthly in 1718 called the New England Courant and, in his very first issue, attacked the venerable and powerful preacher Cotton Mather (because Mather advocated inoculation). Franklin was arrested. When he persisted in his independence, the colonial council later issued a sweeping decree prohibiting him from printing anything "except that it first be supervised by the Secretary of his province."

His younger brother Ben took over the paper and continued to dissent in print from the official viewpoint. Later, the brothers parted and Ben Franklin went to Philadelphia, where he edited his own newspaper so brilliantly under this credo:

"If all printers were determined not to print anything till they were sure it would offend nobody, there would be very little printed."

As the colonial government and its interests diverged more and more from the people who were governed, the idea of free and independent newspapers became more crucial. The most celebrated conflict was the criminal indictment for libel in 1773 against John Peter Zenger, who printed in his New York Weekly Journal what everyone already knew—that the royal governor of New York was a lazy lecher.

The law and the case precedents were all against Zenger, but his lawyer got him off with revolutionary eloquence addressed to the jury. He attacked: "Men who injure and oppress the people under their administration, provoke them to cry out and complain, and then make that very complaint the foundation for new oppressions and prosecutions."

The idea persisted, despite threats and intimidation from the King and his agents. By the start of the Revolution, "patriot papers" were operating throughout the colonies—"publishing in the front room and sedition in the back," as Tebbel described them. The Boston Gazette office—where the Tea Party was probably planned—was high on the British list of places to capture when the fighting began.

Out of this tradition, the First Amendment established the broad protection from government supervision which newspapers claim and which is tested periodically in conflict. In the abstract principle, the main check upon newspapers would be the reading public, the free marketplace of ideas, and all that. In practice, the government has sometimes indeed had to protect the press from the public, proba-

bly more newspapers have been closed down by angry mobs than by federal marshals.

The idea of many, competing editorial voices survived the great trial of the republic's early years when, as always, the press endangered the limits of freedom by its own excesses. George Washington grumbled, but did not use official power against the newspaper which greeted his Farewell Address with the remark: "If ever a nation was debauched by a man, the American nation has been debauched by Washington."

When Federalist papers directed the same sort of venom at President Thomas Jefferson, he complained too, but stood by the principle that he had advocated: "No government ought to be without censors and where the press is free, no one ever will. If virtuous, it need not fear the fair operation of attack and defense. Nature has given to man no other means of sifting out the truth either in religion, law or politics."

In that spirit, President James Madison did not suppress the Federal Republican in Baltimore when it attacked him during the War of 1812, although the newspaper was widely accused of treason—and a mob destroyed it.

Limits Remain

THE GREAT LEGAL questions which have flowed from this principle of free expression have, generally speaking, broadened that freedom progressively through the years—decisions which made it easier for newspapers to get information from the government, made it harder for people and, especially, politicians, to sue newspapers for libel, and liberalized the legal definitions of obscenity and subversion to the point where it is difficult to prosecute a publisher for either.

But limitations remain. Newspapers have been closed by government action, though not by the kind of limited injunction the Justice Department has been seeking against printing specific material in The New York Times, The Washington Post and the Boston Globe. If not closed, they have been threatened or penalized. Like the current episode, the most climactic clashes developed over protecting national security.

During the Civil War, President Jefferson Davis and his Confederate generals were faithful readers of the Yankee press, gleaning details of enemy troop movements (presumably, Union generals also followed dispatches from the Press Association of the Confederate States of America which covered the war for 43 dailies in the South).

Gen. Sherman blamed his setbacks on newspaper leaks (newspapers, for their part, reported that the general was insane). Lincoln issued a sweeping order reminding the legion of battlefield correspondents that they could be court-martialed for espionage if their reporting aided the enemy. Some

newspapers characterized the Commander-in-Chief as "a slang-whanging stump-speaker" and "half-witted usurper" and "mole-eyed."

Besides the press-security conflict on the battlefield, the government dealt more severely with homefront disloyalty—the pro-slavery Copperhead newspapers which made mischief throughout the war.

The Chicago Times was under a seizure order issued by Gen. Burnside, then reversed by President Lincoln (the excitement was credited with reviving the paper's falling circulation). The Philadelphia Evening Journal was suppressed; so was the Christian Observer. A New York grand jury attacked the disloyalty of five local newspapers and the editor of the Ohio Statesman was indicted, but died before his trial.

In 1864 the New York World and the Journal of Commerce were closed down by troops for two days after they printed a bogus presidential proclamation announcing a new draft call of 400,000 men. The New Orleans Picayune, which reprinted the phony story, was closed for two weeks.

Some of the same questions arose during World War I and the government employed a pressure tactic which folded some publications without violating the contemporary interpretation of the Constitution—revoking their mailing privileges. More than 75 papers felt this threat from the Post Office Department; some of them succumbed and legal challenges failed.

In covering the war, a "voluntary censorship" was accepted by the newspapers to get accreditation for their correspondents. Generally, it worked, although The Washington Post and the Hearst newspapers, among others, were accused of breaking the rules on several occasions.

During World War II, the pattern was similar. Most conventional newspapers learned to live with "voluntary censorship," but the national security was invoked against the eccentric, like Father Charles E. Coughlin's right-wing "Social Justice," closed down after he was threatened under the 1917 Espionage Act. Some 30 publications were indicted for disloyalty, according to Frank Luther Mott, journalism's authoritative historian. Others lost their postal permits.

Col. Robert R. McCormick's Chicago Tribune, bitterly against American intervention and on mutually venomous terms with the President, had the most celebrated confrontations. Besides printing the U.S. war plans before the war had started, the Tribune was accused of leaking the fact in 1942 that the United States had broken the Japanese naval code—a feat which won the Battle of Midway and promised future naval victories until its revelation.

The accusation was based on the Tribune's detailed account of the battle—which was so complete the government claimed it could only reveal to the Japanese that their code was broken. The newspaper always denied the charge and a federal grand jury in Chicago investigated the incident, then dropped it. In hindsight, Pentagon secret-keepers acknowledged in 1954 that the Japanese did not find any significance in the Tribune's original story, and were not even alerted by the political flap surrounding it. The lesson, according to Pentagon officials, was that once a serious leak occurs, it may be better to ignore it.

Unexplored Questions

WHATEVER ELSE MAY BE said about him, the late Col. McCormick was more consistent than some of his fellow publishers on one point—his deep suspicion of government interference with the press. The Chicago Tribune championed the cause in 1927 of an obscure Minneapolis publication called The Saturday Press, threatened with a court injunction putting it out of business as "malicious, scandalous and defamatory."

The legal test which followed, *Near v. Minnesota*, was financed by the colonel and other publishers, providing the one clear Supreme Court precedent for the current controversy over prior restraint. In that 1931 decision, the Supreme Court held that Minnesota could not regulate a newspaper the way it might penalize a dairy that sells bad milk or a stockbroker who defrauds his customers.

"The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct," the court declared. "Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege."

The Supreme Court, however, noted that even that rule is not absolute. It suggested some exceptions when a government might reasonably seek an injunction to prevent a publication: to avoid obstruction to its recruiting program or the revelation of troop-movement schedules, or to protect the community against incitement to riot or the violent overthrow of the government.

In just the last few years, a new reading of the First Amendment has been developed by some legal scholars which puts modern newspaper management on the defensive. The theory

holds that "freedom of the press" belongs to everyone, not just the people who own the newspapers, and the crucial test is whether everyone's viewpoint is given fair access to the news columns. That departure raises deep and largely unexplored questions about who controls the printing presses and whether monopoly ownership inhibits the freedom protected by the First Amendment.

Last week, the judges were deciding whether the "top secret" documents from the Vietnam policy study qualify as exceptions to the First Amendment, as cited in the *Near* decision. Ironically, both sides have cited a 1968 opinion written by an appellate judge in Washington—now Chief Justice Warren Burger.

The government argues that Judge Burger's decision recognized that prior restraints on the press are permissible in some circumstances. But the newspapers point to another declaration by the same judge:

"A free, open society elects to take calculated risks to keep expression uninhibited."



Gen. Sherman: "Good, now we shall have news from hell before breakfast."



Underwood & Underwood

The Chicago Tribune's legendary owner, Col. Robert McCormick,
testified against the Lend-Lease bill at a 1941 hearing.

Spring, Ill

Times Herald



FIVE * EDITION
LARGEST NET PAID CIRCULATION
OF ANY WASHINGTON NEWSPAPER

WASHINGTON, D. C.

FRIDAY, DECEMBER 5, 1941

Copyright 1941
Times Herald

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Shanack's Share
Probers Told

BY PETERSON

plunged deeper yesterday into
war II's "profligates," and
Leon K. Shanack, of New
appropriated by Congress for na-
tional defense.
With the stage thus set, Chief
Investigator W. Ralph Burton rose
and asked dramatically: "Is Leon
Shanack in the room?"
Shanack's Technical
Shanack, it developed, had ac-
quired service of a submarine but

Reds Retake
100 Towns in
Rostov Area

Start Donets Thrust
After Crushing Nazi
Drive Near Kharkov

BY EDWARD W. HEATIE

LONDON, Dec. 5 (Reuters).—
Red Army forces on the
southern front have captured
about 100 villages west of Rostov.
en-Don in the last 24 hours, and
Soviet troops to the north have
started a big push through the
Donets Basin after crushing a

War Plan Expose Rocks Capital,
Perils Army Appropriation Bill;
London Hails Prospect of A. E. F.

Congress in Up-
Tinkham Declares
Republic Betrayed

BY WILLIAM STRANG

Reception by the Chicago Trib-
une and the Washington Times
Herald of the disclosure of
Italy's secret war plan

British Press Headlines
Sensational Disclosure

BY LARRY RIE

LONDON, Dec. 5 (Friday) (C.T.P.S.).—London news-
papers this morning give important space to the Chicago
Tribune's and Washington Times Herald's

Administration Fears
Nation's Wrath Over
Secret Project

Summary of Secret War
Plan on Page 24

BY ARTHUR BEARS HEATING
The Washington Times Herald
Page 1

On Dec. 4, 1941, the Chicago Tribune and the Wash-
ington Times-Herald printed the U.S. government's
secret war mobilization plans—three days before

Pearl Harbor. Despite the ensuing furor reported
the next day by the Times-Herald (above), the gov-
ernment took no action against either paper.

in darkness, directly hitting the runway with 2,000-pound bombs, the communique said. He said their action on the ground that the Russians were carrying American materials.

Midway Victory Aftermath:

U. S. Jury Ordered to Probe Battle Dispatch by Tribune

An immediate Federal Grand Jury investigation of a Chicago Tribune news dispatch of June 7, containing allegedly confidential military information concerning the Battle of Midway, was ordered last night by Attorney General Francis Biddle.

The inquiry, to be conducted in Chicago, was the result of a preliminary investigation by the Justice Department. It was being started upon the recommendation of the Navy Department.

The dispatch, printed in the Tribune and distributed to certain other newspapers, described in detail the strength of the Japanese fleet as it approached Midway, only to be repulsed by a combined air and sea attack of U. S. Navy, Army and Marine forces.

The Tribune story was carried in the Washington Times-Herald and the New York News on

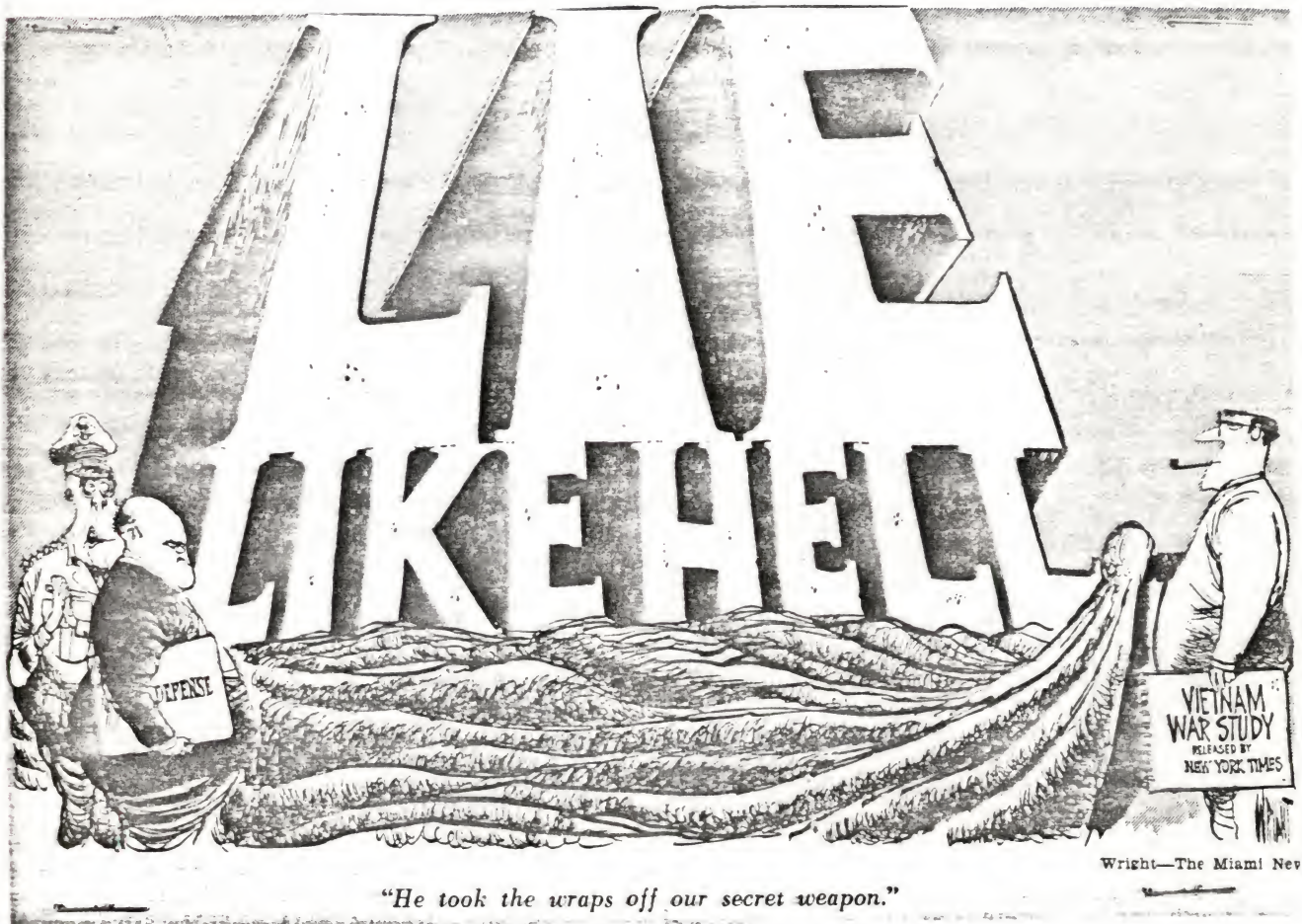
Biddle said the Grand Jury would be directed to investigate possible violation of any criminal statute, particularly the 1917 Espionage Act as amended in March 1940.

This pertains to unlawful communication of documents or information pertaining to national defense and provides, on conviction, maximum penalties of \$10,000 fine, or imprisonment for 10 years, or both.

Biddle said he has appointed William D. Mitchell of New York, who was Attorney General during the Hoover administration, as a special assistant to the Attorney General.

He has been in charge of the preliminary inquiry and will direct the Grand Jury investigation and any prosecution which may result therefrom.

Another leak that prompted an investigation, but no charges, reported by the Washington Times-Herald in August, 1942.





Jack Anderson

The Pentagon's Fulbright File

WHEN SEN. J. William Fulbright (D-Ark.) began attacking the Pentagon in December, 1969, about its spendthrift propaganda program on Vietnam, the Defense Department responded by setting up a special file on the senator.

A year later, Fulbright explicitly asked Defense Secretary Melvin Laird whether the Pentagon "now maintains or has ever maintained a file containing information about me or my activities."

Two months after Fulbright questioned the Pentagon, Laird's general counsel, Fred Buzhardt, replied that the Pentagon had no "investigative file" on Fulbright, but did keep public biographical data on members of Congress.

But Buzhardt did not tell Fulbright that files kept in the office of Assistant Defense Secretary Roger Kelley zeroed in on Fulbright, not on all members of Congress.

Fulbright, chairman of the Foreign Relations Committee, is an acid critic of the Vietnam war and of the Pentagon's efforts to sell the war to the American people.

Memos from Kelley's files, meant only for the eyes of the top brass, but now in our possession, show that Fulbright came under special Pentagon scrutiny on Dec. 8, 1969. His file was under the care of Cdr. George Marakas, a trusted officer in the Office of Information, Armed Forces.

Marakas informed his superiors on Dec. 8 that "a file is being established on Sen. Fulbright's speeches on the Senate floor concerning DOD (Department of Defense) and the individual Services Public Relations programs."

On Dec. 10, another confidential memo was sent to Col. Earl Browning, deputy to John Broger, the Pentagon's information czar under Kelley, advising that the file on Fulbright had become active.

The memos were routinely sent to Broger who, it appears, authorized the Fulbright file to be continued and even expanded. On Dec. 17, Browning was told jubilantly by his Fulbright specialists that one of them had:

"Assembled speeches in the Senate by Sen. Fulbright concerning Army, Navy, Air Force and Department of Defense Public Information programs."

"He also obtained a copy of Bill (S. 3217) introduced by Sen. Fulbright requiring the Secretary of Defense to submit regular reports to the Committees on Armed Services of the House of Representatives and the Senate" on Pentagon information releases.

The Fulbright specialist did not advise his superiors that the material he had so meticulously gathered is public information available to anyone who cares to read the Congressional Record.

The file remained active during Fulbright's running battle with the Pentagon over its ballyhooing of the Vietnam war. But we could find no report on whether Kelley and his snoopers built it into a more personal file similar to those the Pentagon has prepared on many other public figures. The Pentagon, however, insisted that only materials from the public record were in the file, the last dated June 1970.

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Agnew Hits 'Cheap Fencing' in Press

PHOENIX, Ariz., June 26 (UPI)—The newsmen who reveal government secrets are "the same people who are firmly controlling American opinion through a biased and slanted" view of the world, Vice President Agnew said last night.

He called the publication of the classified Pentagon report on the growth of the Vietnam war a "cheap, common fencing operation."

Agnew departed from his prepared text to criticize the news media in a speech to the convention of the National Young Republican Federation. He said:

"The same people who are putting this most distorted viewpoint of American participation in the South Vietnamese war before the American people, the same people who rush to expose those portions of secret documents that support their point of view—even though they may just be contingency plans that were drawn up to take care of events that never happen—these are the same people who are firmly controlling American opinion through a biased and slanted and an oversighted

viewpoint of what is taking place around the world.

"I believe the papers that made those exposes and the commentary of some of the networks in support of these revelations, you'll get the opinion right off the bat that the American people are solidly behind this thing they call freedom of the press.

"I call it a cheap, common fencing operation."

Agnew said a poll taken June 21 by Opinion Research showed 76 per cent of those questioned said the news media should not reveal government secrets until the government decides publication would not harm the national security, 14 per cent were in favor of publication and 10 per cent had no opinion.

Seventy-four per cent of those polled said freedom of the press did not include the right to print stolen government documents, he said, with 15 per cent in favor of publication and 11 per cent without an opinion.

In his prepared remarks, Agnew attacked the idea of setting a date for a withdrawal of American forces from Vietnam. He said there was "not a scintilla of evidence" that North Vietnam would compromise if the United States set such a date.

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UPI-41

ADD 1 VIET REPORTS, WASHINGTON (UPI-37)

GRISWOLD TOLD THE COURT THAT WHILE THE NEWSPAPERS RIGHTLY PLACE GREAT IMPORTANCE ON FREEDOM OF THE PRESS THERE IS ALSO THE MATTER OF THE "INTEGRITY OF THE PRESIDENCY" AND WHETHER IT CAN "FUNCTION EFFECTIVELY."

HE SAID THERE IS NOT AND NEVER HAS BEEN A CONSTITUTIONAL RULE THAT THE PRESS CAN NEVER BE STOPPED FROM PRINTING WHAT IT WISHES.

GRISWOLD CITED COPYRIGHT AND LITERARY PROPERTY LAWS AS EXAMPLES OF DETERRENTS TO A COMPLETELY UNFETTERED PRESS. THE NEWSPAPERS, HE SAID, ARE VERY LIKELY OBTAINING ROYALTIES "BECAUSE OF THEIR COPYRIGHT ON THIS MATTER."

JUSTICE POTTER STEWART ASKED GRISWOLD IF HIS ARGUMENT DIDN'T RESOLVE ITSELF BASICALLY INTO AN ISSUE OF THE FACTS IN THIS PARTICULAR CASE -- WHETHER PUBLICATIONS OF THE MATERIAL WOULD ACTUALLY HARM THE GOVERNMENT REGARDLESS OF WHETHER IT WAS CLASSIFIED "SECRET," OR HOW THE PAPERS OBTAINED IT.

"DOESN'T IT DEPEND ON THE CLAIM THAT DISCLOSURE WOULD RESULT IN IMMEDIATE, GRAVE THREAT TO THE SECURITY OF THE UNITED STATES HOWEVER THE MATERIAL WAS ACQUIRED," STEWART ASKED.

"YES, BUT THE FACT THAT OBVIOUSLY IT WAS ACQUIRED IMPROPERLY IS NOT IRRELEVANT," GRISWOLD REPLIED.

HE TOLD THE COURT HE SPENT ALL YESTERDAY AFTERNOON WITH OFFICIALS FROM THE STATE AND DEFENSE DEPARTMENTS GOING OVER THE PAPERS AND ASKING: "TELL ME WHAT ARE THE WORST -- THE THINGS THAT REALLY MAKE TROUBLE."

HE SAID 10 ITEMS LISTED IN THE GOVERNMENT'S CLOSED BRIEF ARE THE ONES ON WHICH IT RELIES MOST BUT THAT HE HAD NOT SEEN MANY OF THE PAPERS LISTED IN A "SPECIAL APPENDIX," WHICH HAS BEEN USED IN LOWER COURTS TO SPECIFY PARTICULAR ITEMS THE GOVERNMENT DOES NOT WANT DISCLOSED.

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WASHINGTON CAPITAL NEWS SERVICE

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ONE OF THE 10 ITEMS, HE SAID, IS ACTUALLY FOUR VOLUMES OF THE 47 VOLUME PENTAGON STUDY ALL DEALING WITH MATERIAL WHICH IF BROADCAST "TO THE ENTIRE WORLD AT THIS TIME WOULD BE OF EXTRAORDINARY SERIOUSNESS TO THE SECURITY OF THE UNITED STATES."

HE ADDED THAT THE GOVERNMENT STILL DOES NOT KNOW EXACTLY WHAT THE NEWSPAPERS HAVE DESPITE AN EXCHANGE OF INFORMATION IN LOWER COURTS IN NEW YORK. FOR INSTANCE, HE SAID, A TELEGRAM TO THE CANADIAN GOVERNMENT WHICH HAS BEEN PUBLISHED IS NOT IN THE 47 VOLUMES AND NOT EVEN REFERRED TO IN THEM.

"HOW THEY GOT IT I DON'T KNOW," HE SAID.

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UPI-37

(VIET REPORTS)

WASHINGTON--THE SUPREME COURT HEARD OPENING ARGUMENTS TODAY IN THE HISTORIC LEGAL BATTLE OVER THE PUBLICATION OF SECRET PENTAGON DOCUMENTS ON VIETNAM.

THE CASE BROUGHT BY THE JUSTICE DEPARTMENT AGAINST THE NEW YORK TIMES AND THE WASHINGTON POST WAS THE FIRST IN WHICH THE SUPREME COURT AGREED TO RULE ON JUDICIAL AUTHORITY TO RESTRAIN THE PRESS FROM PUBLISHING NEWS THE EXECUTIVE BRANCH DEEMED A THREAT TO U. S. SECURITY.

U. S. SOLICITOR GENERAL ERWIN N. GRISWOLD, PRESENTING THE GOVERNMENT'S POSITION, TOLD THE JUSTICES AND A JAMMED COURT CHAMBER DISCLOSURE OF SOME MATERIAL IN THE 47-VOLUME PENTAGON STUDY POSSESSED BY BOTH NEWSPAPERS WOULD NOT BE IN THE NATIONAL INTEREST. 22

GOVERNMENT LAWYERS CONTENDED IN PREVIOUS LOWER COURT HEARINGS THE DOCUMENTS WERE STOLEN IN VIOLATION OF THE ESPIONAGE ACT BEFORE THE NEWSPAPERS OBTAINED THEM.

GRISWOLD WAS GIVEN ONE HOUR TO ARGUE THE GOVERNMENT'S CASE.

ATTORNEYS FOR THE POST AND THE TIMES ALSO WERE ALLOWED AN HOUR WITH THE TIME DIVIDED EQUALLY FOR EACH OF THE PAPERS, TO SAY WHY, IN THE INTERESTS OF A FREE PRESS, THEY SHOULD BE PERMITTED TO RESUME PUBLICATION OF ARTICLES BASED ON THE PENTAGON STUDY WITH NO RESTRICTIONS WHATSOEVER.

THE OPENING ARGUMENTS BEGAN IN THE SUPREME COURT AT 11 A. M., RIGHT ON SCHEDULE. MORE THAN FIVE HOURS EARLIER, PEOPLE BEGAN LINING UP ON THE WHITE MARBLE STEPS OUTSIDE TO GAIN ADMISSION TO THE HEARING. BY THE TIME THE PROCEEDINGS GOT UNDER WAY, EVERY SEAT IN THE CHAMBER WAS FILLED.

THE NINE JUSTICES GAVE NO INDICATION, AS USUAL, WHEN THEY WOULD
ISSUE THEIR DECISION. BUT COURT OBSERVERS SAID IT WAS POSSIBLE
AN OPINION MIGHT COME MONDAY, THE DAY THE COURT HAD PLANNED TO
ADJOURN ITS CURRENT TERM. REC-39 65-74660-A

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File 5-ER*

65-74060 *Junco*

GRISWOLD TOLD THE COURT THAT THE POST AND THE TIMES "CONSCIOUSLY AND INTENTIONALLY PARTICIPATED IN A BREACH OF TRUST" BY PUBLISHING THE PENTAGON WAR STUDY.

AT THE START OF THE SESSION, CHIEF JUSTICE WARREN E. BURGER DENIED A GOVERNMENT MOVE TO HOLD SOME OF THE ARGUMENTS IN SECRET. HE SAID THE LAWYERS MAY SUBMIT PAPERS "UNDER SEAL" INSTEAD.

GRISWOLD SAID ALL THREE PARTIES HAVE FILED WHAT HE TERMED "CLOSED BRIEFS." HE SAID THE GOVERNMENT'S PAPERS WERE FORTIFIED BY STATE AND DEFENSE DEPARTMENT GIVING THE COURT "MORE DETAIL."

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SUNTIMES 6-26 NX

WITH REPORT 050A

CHICAGO (UPI)--THE CENTRAL INTELLIGENCE AGENCY TOLD THE NIXON ADMINISTRATION IN 1969 THAT IT COULD IMMEDIATELY WITHDRAW FROM VIETNAM AND "ALL OF SOUTHEAST ASIA WOULD REMAIN JUST AS IT IS FOR AT LEAST ANOTHER GENERATION," THE CHICAGO SUN-TIMES SAID IN A COPYRIGHTED STORY IN TODAY'S EDITIONS.

"WE COULD LOSE LAOS IMMEDIATELY," THE NEWSPAPER SAID, QUOTING WHAT IT SAID WERE SECRET GOVERNMENT DOCUMENTS. "SIHANOUK WOULD PRESERVE CAMBODIA BY A STRADDLING EFFORT. ALL OF SOUTHEAST ASIA WOULD REMAIN JUST AS IT IS FOR AT LEAST ANOTHER GENERATION.

"THAILAND, IN PARTICULAR, WOULD CONTINUE TO MAINTAIN CLOSE RELATIONS WITH THE U.S. AND WOULD SEEK ADDITIONAL SUPPORT. SIMULTANEOUSLY, THAILAND WOULD MAKE OVERTURES AND MOVE TOWARD CHINA AND THE SOVIET UNION. OR WOULD SIMPLY TAKE AID FROM BOTH SIDES TO PRESERVE ITS INDEPENDENCE.

"NORTH VIETNAM WOULD CONSUME ITSELF IN LAOS AND SOUTH VIETNAM. ONLY LAOS WOULD DEFINITELY FOLLOW INTO THE COMMUNIST ORBIT."

THE SUN-TIMES SAID THE CIA TOTALLY REJECTED "THE SO-CALLED DOMINO THEORY ON WHICH U.S. POLICY WAS BASED IN THE EISENHOWER, KENNEDY AND JOHNSON ADMINISTRATIONS" AND FOLLOWED A POSITION CONSISTENT WITH A LONG LINE OF ESTIMATES DATING BACK TO THE ORIGINAL INVOLVEMENT IN VIETNAM IN 1954.

"FOR EXAMPLE," THE NEWSPAPER SAID, "THE DOCUMENTS SHOW THAT ON MAY 25, 1964, THE CIA DECLARED IN A NATIONAL INTELLIGENCE ESTIMATE THAT THE UNITED STATES WOULD 'RETAIN CONSIDERABLE LEVERAGE IN SOUTHEAST ASIA EVEN IF LAOS AND SOUTH VIETNAM CAME UNDER NORTH VIETNAMESE CONTROL.'"

THE SUN-TIMES SAID THE ESTIMATE WAS PRODUCED AS PART OF THE CIA'S PESSIMISTIC ASSESSMENT OF THE VALUE OF LAUNCHING A BOMBING ATTACK AGAINST NORTH VIETNAM. THE CIA, ACCORDING TO THE NEWSPAPER, ARGUED THAT AIR ATTACKS WERE UNLIKELY TO BREAK HANOI'S WILL AND CARRIED THE DANGER OF ESCALATING THE WAR INTO "A DIRECT CONFRONTATION WITH COMMUNIST CHINA AND THE SOVIET UNION."

THE PAPER SAID PRESIDENT LYNDON B. JOHNSON REJECTED THE CIA ADVICE AND BEGAN SUSTAINED BOMBINGS OF THE NORTH.

"SIMILARLY, PRESIDENT NIXON DISREGARDED THE CIA ESTIMATE IN 1969," IN DECIDING ON A SLOW WITHDRAWAL, EXPANSION OF THE WAR INTO LAOS AND CAMBODIA AND PARTIAL REVIVAL OF THE BOMBING OF THE NORTH.

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60 JUL 6

WASHINGTON CAPITAL NEWS SERVICE

NOT RECORDED

15 JUL 2 1971

File 5-ERR
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REC- 32

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UPI-66

(ELLSBERG)

BOSTON--DR. DANIEL ELLSBERG WILL SURRENDER MONDAY MORNING TO
 FEDERAL AUTHORITIES IN BOSTON TO FACE CHARGES OF ILLEGALLY POSSESSING
 AND FAILING TO RETURN DOCUMENTS FROM A TOP SECRET STUDY OF THE
 VIETNAM WAR, HIS ATTORNEYS SAID TODAY.

ATTORNEYS CHARLES R. NESSON, OF THE HARVARD LAW SCHOOL, AND
 LEONARD D. ABOUDIN, A VISITING PROFESSOR AT THE LAW SCHOOL, SAID
 ELLSBERG WOULD APPEAR AT 10 A.M. AT THE OFFICE OF U.S. ATTORNEY
 HERBERT TRAVERS AND THAT THE FBI HAD BEEN ASKED TO "REFRAIN FROM
 APPREHENDING" ELLSBERG UNTIL THAT TIME.

NESSON SAID THE FBI PLANNED TO RESPOND TO THE REQUEST LATER
 IN THE DAY.

THE LAWYERS DECLINED ALL COMMENTS ABOUT ELLSBERG'S WHEREABOUTS.
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133 JUL 6 1971

File 5-ERR

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51 JUL 9 1971

WASHINGTON CAPITAL NEWS SERVICE

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UPI-97

ADD ELLSBERG, BOSTON

THE JUSTICE DEPARTMENT REJECTED AN OFFER TODAY FOR THE
 SURRENDER OF DR. DANIEL ELLSBERG AND SAID THEIR HUNT FOR THE FORMER
 PENTAGON OFFICIAL WOULD CONTINUE.

LAWYERS FOR ELLSBERG SAID HE WOULD SURRENDER TO U. S.
 ATTORNEY HERBERT TRAVERS IN BOSTON MONDAY AT 10 A.M. EDT TO
 FACE CHARGES OF ILLEGALLY POSSESSING AND FAILING TO RETURN DOCUMENTS
 FROM A TOP SECRET STUDY OF THE VIETNAM WAR.

THE ATTORNEYS EARLIER SAID ELLSBERG WOULD SURRENDER IMMEDIATELY
 IF THE GOVERNMENT COULD GUARANTEE HIS RELEASE WITHOUT BAIL.
 HOWEVER, SPOKESMEN FOR THE JUSTICE DEPARTMENT IN WASHINGTON
 SAID THE OFFER WAS REJECTED BECAUSE OF THE NATURE OF THE CRIME
 INVOLVED.

LEONARD D. BOUDIN, A VISITING PROFESSOR AT THE HARVARD LAW
 SCHOOL WHO DEFENDED DR. BENJAMIN SPOK DURING HIS TRIAL FOR CONSPIRACY
 TO AID AND ABET DRAFT EVADERS, TOLD NEWSMEN THE OFFER WAS MADE TO
 FEDERAL OFFICIALS EARLIER IN THE DAY.

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REC-39

UPI-6

(VIET REPORTS)

WASHINGTON--THE U.S. SUPREME COURT, JOINING A HISTORIC LEGAL BATTLE BETWEEN THE GOVERNMENT AND THE PRESS, SUMMONED ATTORNEYS TODAY FOR ARGUMENTS OVER PUBLICATION OF MATERIAL FROM A TOP SECRET PENTAGON STUDY OF THE ORIGINS OF THE VIETNAM WAR.

THE SUPREME COURT VOTED 5 TO 4 FRIDAY TO REVIEW CASES THAT GREW OUT OF A SERIES OF ARTICLES PRINTED BY THE TIMES AND THE WASHINGTON POST FROM DOCUMENTS IN THE 47-VOLUME STUDY, PREPARED DURING THE LATER STAGE OF THE ADMINISTRATION OF PRESIDENT LYNDON B. JOHNSON.

ARGUMENTS WERE SCHEDULED BEFORE THE NINE JUSTICES AT 11 A.M. EDT TODAY. THERE WAS NO INDICATION WHEN THE COURT WOULD RULE BUT COURT OBSERVERS SAID IT WAS POSSIBLE THE JUSTICES WOULD WORK SUNDAY AND ISSUE A DECISION MONDAY.

BOTH THE TIMES AND THE POST ANNOUNCED FRIDAY THEY WOULD PUBLISH NOTHING FURTHER UNTIL A RULING IS ISSUED BY THE SUPREME COURT. THE COURT'S OPINION FRIDAY ALLOWED THE NEWSPAPERS TO GO AHEAD IN TODAY'S EDITIONS WITH PUBLICATION OF ALL MATERIAL FROM THE STUDY THAT WAS NOT DESIGNATED IN THE GOVERNMENT'S "SPECIAL APPENDIX" OF MATERIAL IT WANTS SUPPRESSED.

BUT BENJAMIN S. BRADLEE, THE POST'S EXECUTIVE EDITOR, SAID LAST NIGHT THE GOVERNMENT'S LIST OF UNAPPROVED DOCUMENTS "IS SO SUBSTANTIAL AS TO MAKE IT IMPOSSIBLE FOR US TO DECIDE WHAT WE COULD PRINT."

EX-105 REC-39 65-74060-A
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59 JUL 8 - 1971

WASHINGTON CAPITAL NEWS SERVICE

File 5- ERM
65-74060

IT WAS THE FIRST CASE TO COME BEFORE THE SUPREME COURT INVOLVING ANY COURT'S AUTHORITY TO RESTRAIN THE PRESS FROM PUBLISHING NEWS STORIES WHICH THE GOVERNMENT DEEMS A THREAT TO NATIONAL SECURITY.

THE GOVERNMENT WAS LEADING OFF TODAY WITH THE ARGUMENT THAT ANY DISCLOSURE OF THE INFORMATION IN THE APPENDIX WOULD PREJUDICE THE NATIONAL INTEREST. GOVERNMENT LAWYERS CONTENDED IN LOWER COURT HEARINGS THE PAPERS WERE STOLEN IN VIOLATION OF THE ESPIONAGE ACT. THE GOVERNMENT WAS GIVEN ONE HOUR TO PRESENT ITS CASE.

LAWYERS FOR THE TIMES AND THE POST WERE GIVEN ONE-HALF HOUR EACH TO SAY WHY, IN THE INTERESTS OF A FREE PRESS, THE NEWSPAPERS SHOULD BE ALLOWED TO CONTINUE PUBLICATION OF THEIR SERIES.

FRIDAY, FOUR OF THE JUSTICES VOTED TO LIFT PROMPTLY ALL RESTRAINTS AGAINST THE TIMES AND POST WITHOUT WAITING TO HEAR ARGUMENTS IN THE SUPREME COURT. THEY WERE JUSTICES WILLIAM O. DOUGLAS, HUGO L. BLACK, THURGOOD MARSHALL AND WILLIAM J. BRENNAN JR.

DOUGLAS WAS POLLED BY PHONE AT HIS GOOSE PRAIRIE, WASH., VACATION HOME. HE ARRANGED TO FLY BACK TO WASHINGTON LAST NIGHT.

THE OTHER FIVE JUSTICES, CHIEF JUSTICE WARREN E. BURGER AND JUSTICES JOHN M. HARLAN, POTTER STEWART, BYRON R. WHITE AND HARRY A. BLACKMUN VOTED TO CONTINUE PARTIAL RESTRAINTS AGAINST THE NEWSPAPERS AND HOLD A SUPREME COURT HEARING.

6-26--EH836AED

Nixon Documents Revealed

CIA Advised in '69
U.S. Could Pull Out

H-1
This story is derived entirely from information distributed by United Press International and Associated Press.

The Chicago Sun-Times says in an article today that the Nixon administration was told by the Central Intelligence Agency in 1969 that it could immediately withdraw from Vietnam and "all of Southeast Asia would remain just as it is at least for another generation."

In another article based on material from secret government documents, the St. Louis Post-Dispatch said yesterday that former Defense Secretary Robert S. McNamara told President Johnson privately in 1966 that military escalation in North and South Vietnam was not having the desired effect and reported he saw "no reasonable way to bring the war to an end soon."

The Sun-Times, in a copyrighted story in Saturday's editions, says the CIA told Mr. Nixon at the beginning of his administration that withdrawal would result in the immediate loss of Laos.

The newspaper quotes a CIA advisory to the President as saying, Prince "Sihanouk would preserve Cambodia by a straddling effort. All of Southeast Asia would remain just as it is at least for another generation."

"Thailand, in particular, would continue to maintain close relations with the U.S. and would seek additional support. Simultaneously, Thailand would make overtures and move toward China and the Soviet Union. It would simply take aid from both sides to preserve its independence."

"North Vietnam would consume itself in Laos and South Vietnam. Only Laos would definitely follow into the Communist orbit."

Walters
The CIA totally rejected "the so-called domino theory on which U.S. policy was based in the Eisenhower, Kennedy and Johnson administrations," the Sun-Times says, and followed a position consistent with a long line of estimates dating back to the original involvement in Vietnam in 1955.

"The CIA produced the estimate as part of its pessimistic assessment of the value of launching a bombing campaign against North Vietnam," the newspaper says.

The controversial secret Pentagon study of U.S. involvement in the Vietnam war was prepared in 1968 and covers events through 1967. The Sun-Times article is based on events of 1969.

The Post-Dispatch in its story said the memorandum from McNamara to President Johnson is dated Oct. 14, 1966, and is contained in the secret Pentagon study. The memorandum was written at a time when both men were speaking optimistically in public about progress being made militarily, the paper said.

McNamara was quoted as writing that the first year and a half of bombing of North Vietnam had failed to stem infiltration or crack the enemy's morale. He recommended the bombing at its 1966 level.

The Post-Dispatch said the Pentagon documents showed the Joint Chiefs of Staffs disagreed strongly with McNamara's assessment.

"In essence," McNamara was quoted as saying, "we find ourselves — from the point of view of the important war for the complicity of the people — no better, and if anything, worse off."

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The Washington Post Times Herald *A-1* _____
The Washington Daily News _____
The Evening Star (Washington) _____
The Sunday Star (Washington) _____
Daily News (New York) _____
Sunday News (New York) _____
New York Post _____
The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

Date **JUN 26 1971**

File 5-ERH

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"This important war must be fought and won by the Vietnamese themselves. We have known this from the beginning. But the discouraging truth is that, as was the case in 1961 and 1962 and 1965 we have not found the formula, the catalyst, for training and inspiring them into effective action."

The government has labeled the Pentagon papers "top secret," but the Post-Dispatch said the several hundred pages of copies it obtained bore no security classification. It said, however there was a blank space at the bottom of each page where a strip of paper had been laid over the place where a security label is usually stamped.

A Justice Department spokesman said last night in Washington that the government was reviewing the articles in the Post-Dispatch and considering whether to take legal action against that newspaper.

Later, however, the Justice Department said the Post-Dispatch had advised the department the newspaper would not publish further documents from the Vietnam study pending a decision today by the Supreme Court in litigation involving The Washington Post and The New York Times.

In the October memorandum and in one drafted for the President one month later, McNamara painted a gloomy picture of the pacification program aimed at bringing rural areas of South Vietnam under government control.

The report went on:

"Pacification has, if anything, gone backward," McNamara said. He said that since the inception of the program about two years earlier enemy forces had grown, attacks and terrorism increased and more railroads were closed and highways cut.

"The pacification program has been stalled for years," he said one month later. "It is stalled today. The situation in this regard is no better — possibly worse — than it was in 1965, 1963 and 1961."

McNamara discounted as "grossly optimistic" a claim that the South Vietnamese had gained control of areas containing 1.5 million people

during a 14-month period in 1965-66.

"It should be noted that about 30 per cent of the reported gains by the South Vietnamese government probably resulted from movement of refugees into cities and towns," he said.

McNamara told the President in the October memorandum that the enemy "apparently has adjusted to our stopping his drive for military victory and has adopted a strategy of keeping us busy and waiting us out."

"The infiltration routes would seem to be one-way trails to death for the North Vietnamese. Yet, there is no sign of an impending break in enemy morale and it appears that he can more than replace his losses by infiltration from North Vietnam and recruitment in South Vietnam."

"I believe we should consider terminating bombing in all of North Vietnam, or at least in the northeast zones, for an indefinite period in connection with covert moves toward peace."

McNamara also proposed trying to split the Vietcong from Hanoi, pressing contacts with the North Vietnamese and developing a plan to give the Vietcong a role in negotiations and postwar life.

McNamara supported his view of the ineffectiveness of bombing with extracts from appraisals by the Central Intelligence Agency, the Defense Intelligence Agency and the Institute for Defense Analysis.

Those reports indicated that the bombing of the north had no serious effect on supplies or morale.

In the November memorandum, McNamara took a more optimistic view of results of both the military build-up and the bombing of North Vietnam, the Post-Dispatch said.

Pentagon analysts who wrote the narrative history of the war said the reaction to McNamara's October proposals from the Joint Chiefs of Staff was "predictively rapid — and violent." They contended the McNamara memorandum did not take into account the "adverse impact over time of continued bloody defeats on the morale of Vietcong and North Vietnamese army forces and the determination of their political military leaders."

The joint chiefs called the air campaign against the north "an . . . indispensable part of our overall war effort."

High Court Hears Arguments on Publication Ban

By LYLE DENNISTON

Star Staff Writer

The Supreme Court met in an unusual weekend session today to hear a government lawyer and two newspaper attorneys argue one of history's most important press freedom cases.

Solicitor Gen. Erwin N. Griswold, the former Harvard law dean, was given the right to speak first to plead for a ruling to empower courts to forbid publication of news stories that the government deemed a serious threat to national security.

After him, Yale law professor Alexander M. Bickel, attorney for the New York Times, and New York City lawyer William B. Glendon, for the Washington Post, were to plead for a decision that "prior restraint" by court order violated the Constitution's 1st Amendment guarantee of a free press.

The court set a two-hour limit on the hearing.

The two newspapers involved in the case brought out editions this morning which were the first in U.S. history to appear with part of the news that editors had planned to run omitted by order of the Supreme Court.

The order was approved by a 5-4 vote of the justices yesterday.

Series Halted

Both papers have wanted to resume interrupted series of articles which the government has charged were based on secret documents, including the massive 47-volume Pentagon study of the Vietnam war's origins—the so-called "Vietnam archives." The series were halted by earlier lower court orders.

Yesterday, in agreeing to rule on the underlying constitutional issue of government power to ban news stories that would disclose state secrets, the Supreme Court imposed a temporary and partial ban on what the Times and Post could report in their columns.

The ban was identical to one which the Times has been under since Wednesday night. The Supreme Court merely extended that ban until after it rules on the constitutional issue, and applied the ban to the Post as well as the Times.

Justices Hugo L. Black, William O. Douglas, William J. Brennan Jr. and Thurgood Marshall dissented to any restraint on the newspapers' publishing freedom, and said they opposed even holding a hearing on the government's challenge to the newspapers.

The dissenters said they would have wiped out the order issued by lower courts against the Times, and would have refused to hear the government request for an order limiting the Post's right to publish.

Order Stops Post

If the Supreme Court had not issued a restriction against the Post, that newspaper would have been free last night to print any news story it chose. An earlier lower court ban had expired at 6 p.m.

Under the terms of yesterday's order by the justices, the Times and Post are forbidden to run any news stories of their own which refer to documents or parts of the Vietnam archives which the government believes could not be disclosed without causing "grave and immediate danger" to national security.

Anything else in the archives could be published in the two newspapers.

The Supreme Court ordered the Justice Department to file—and it did, by 5 p.m. yesterday—a compilation of the documents or study parts it believed were in the category of documents so sensitive they should be banned temporarily.

The newspapers were not given permission to challenge the government's compilation.

Two Document Groups

Included in the government list are two groupings of documents—one supplied at an earlier stage of the Times case, which official sources said includes "less than two dozen items," and another, drawn up yesterday, which sources said includes only "an extremely limited number of items."

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REC-22

The Washington Post _____
Times Herald _____
The Washington Daily News _____
The Evening Star (Washington) **A-1**
The Sunday Star (Washington) _____
Daily News (New York) _____
Sunday News (New York) _____
New York Post _____
The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

JUN 26 1971

Date _____

File 5- EKH

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~~The word "items" means, the~~
sources said, either whole documents, a chapter within a volume, a series of pages, a single page, or perhaps even a single paragraph.

Solicitor Gen. Griswold had told the Supreme Court on Thursday that, if it did impose the kind of ban which was imposed yesterday, the two newspapers would be free to publish stories based on "the vast bulk" of the huge Pentagon study.

The fact that a majority of the justices agreed yesterday to impose a temporary ban within the terms requested by Griswold did not necessarily mean that all five of them would vote, after a hearing, in favor of the constitutionality of any ban.

However, there was no reason to expect that the four dissenters would change their complete opposition to any ban.

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Top Court to Hear All Sides on Viet File

By JAMES WIEGHART

Washington, June 25 (NEWS Bureau)—The United States Supreme Court agreed today to rule on whether the New York Times and Washington Post can publish stories on a secret Pentagon study of the Vietnam war.

The court in two brief orders consolidated the two cases and directed government and newspaper attorneys to give their arguments at an unusual 11 a.m. Saturday hearing before the full court.

There was no indication when the court would rule on the case. However, the court had been scheduled to begin its annual summer recess Monday, and Justice William O. Douglas, who had already left for his vacation retreat at Goose Prairie, Wash., was en route back to Washington tonight for tomorrow's hearing.

The high court, by a 5-to-4 vote, granted the government's request that the two papers be temporarily restrained from printing stories on top secret material in the 47 volume Pentagon study until the court rules on the case.

Legal scholars said today's decision marked the first time in the nation's history that the Supreme Court approved a prepublication ban on a newspaper.

Under lower court orders, the Post would have been free to resume publication of its series of articles on the voluminous Pentagon study at 6 tonight. The Times could have printed only those items in the study which the government considers not damaging to the national interest.

Voting to continue the temporary ban on publication by the Post and Times were Chief Justice Warren E. Burger and Justices John M. Harlan, Potter Stewart, Byron R. White and Harry A. Blackman. Voting to end the ban were Justices Hugo L. Black, William O. Douglas,

William J. Brennan and Thurgood Marshall.

The closeness of the vote was viewed as an indication that the court may be almost evenly split on what shapes up as an historic and classic legal confrontation pitting the First Amendment right of freedom of press against the government's right to safeguard secrets it feels may be vital to national security.

Not much can be inferred from the court's decision to accept jurisdiction of the two cases, since they were filed by opposing sides—the appeal in the New York case by the Times and the appeal in the Washington case by the government.

The Justice Department, in an appeal filed yesterday afternoon, asked the court to overturn a federal appeals court ruling that gave the Post approval to resume publication on the secret study after 6 p.m. today.

Claim Rejected Twice

The Post urged the high court in its answer today to reject the government's petition, calling it "totally unjustifiable." The answer pointed out that the government's argument that publication of the material from the Pentagon study would jeopardize national security has been twice rejected by a U.S. District Court and by the Appellate Court here.

REC-39

The Washington Post _____
Times Herald _____
The Washington Daily News _____
The Evening Star (Washington) _____
The Sunday Star (Washington) _____
Daily News (New York) 2 _____
Sunday News (New York) _____
New York Post _____
The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

JUN 26 1971

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File 5-ERT

REC-39

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The Post charged that the government was now seeking merely to prevent the Post from publishing stories while it tries to strengthen its legal case against the Times, against which it was able to obtain a new favorable ruling from the 2nd U.S. Circuit Court of Appeals in New York.

"Through a series of successive stays based on serious but unproven claims, the government has enjoined the Post for over a week from publishing this news," the Post answer stated. "There has been through this vehicle a steady erosion of a constitutional right. Now the government would seek, for reasons unconnected with this case, a further and indefinite stay in connection with the Times case."

Cite Injury to Readers

"The delay caused by the government can only result in incalculable injury not only to the Post, but its readers. The events of the national debate on the Vietnam issue tumble one upon another daily and must be affected by the ebb and flow of relevant information."

The government's appeal in the Post case followed an earlier appeal by the Times that seeks to end a partial ban imposed on that paper by the New York appellate court. The court also remanded the case to U.S. District Judge Murray I. Gurfein, who had ruled against the government, for further review of documents which the Justice Department contends should remain top secret.

The high court set no time limit for tomorrow's argument, which will be public. However, Burger directed the government to file today a secret list of items from the 47-volume study that

the government believes should not be published.

Editors Back Publication

Meanwhile, leaders of publisher and editor groups told the House subcommittee on foreign operations and government information that publication of the Pentagon study should be continued to protect the public's right to be informed.

J. Edward Murray, president-elect of the American Society of Newspaper Editors, said that he was "sure many considerations, including national security, were weighed" by the editors involved before the decision was made to print material from the secret Pentagon study.

"I am confident that the men who made these decisions are just as loyal, just as patriotic as any man in this room or in the White House."

Murray charged that former President Johnson played "false with the people" about the war in 1967 and 1968, but that people believed the President instead of a skeptical press because "people tend to put great faith in their president."

"I think our (newspapers) record in the Vietnam war is better than that of the executive branch, and I hope one byproduct of publication of the McNamara papers will be to restore public confidence in the traditional axiom that you can believe what you read in the newspaper," Murray said.



Warren E.
Burger



John M.
Harlan

Agree to Continue Ban

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REC-39

S. R. R. K.

High Court to Hear Post, Times Today

Immediate End of Ban Denied, 5-4

By John P. MacKenzie
 Washington Post Staff Writer

The Supreme Court yesterday called for an extraordinary hearing at 11 a.m. today in the battle between the government and The Washington Post and The New York Times over the power to restrain publication of a secret Pentagon history on the Vietnam war.

Acting on urgent petitions from The Times and the Justice Department, the court continued a ban on publication of some of the papers but agreed to consider today the constitutional issues of press freedoms and government claims for national security that have raged for two weeks in the press and the courts.

The cases on the high court's docket are called United States of America v. The Washington Post Co. and The New York Times Co. v. United States of America.

Yesterday's court order was issued over the dissents of four justices—Hugo L. Black, William O. Douglas, William J. Brennan Jr. and Thurgood Marshall—who voted to lift promptly all the restraints against both newspapers without waiting to hear more arguments on either side.

The Washington Post Times Herald A-1
 The Washington Daily News _____
 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
 Sunday News (New York) _____
 New York Post _____
 The New York Times _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

JUN 26 1971

Date _____

EX-115

File 5-ERR

65-74060 Sub A

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JUL 6

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The other five—Chief Justice Warren E. Burger and Justices John M. Harlan, Potter Stewart, Byron R. White and Harry A. Blackmun—combined to order continued "limited" restraints on the two newspapers pending final outcome of the case.

Under the order the papers are prevented from publishing documents the Justice department designated in court on Monday as threatening "grave and immediate danger to the security of the United States."

In addition, the government was given until 5 p.m. yesterday to identify "with particularity" other documents from the 7,000-page study which the papers will be temporarily forbidden to print.

However, The Post and The Times decided independently against printing portions of the 47-volume Pentagon archives in their possession, preferring to await today's events.

The court's lineup in yesterday's brief orders indicates that Solicitor General Erwin N. Griswold may face an uphill fight when he addresses the justices this morning. The five justices in the majority gave no hint of their ultimate vote on the merits. But the four dissenters said they "would not continue the restraint, limited or otherwise" and would refuse to hear the matter further.

The court's order noted that "portions of the record or argument relating to matters claimed to affect national security may be filed in sealed form," raising the possibility that an apparently unprecedented secret argument will have to be held—as was done in lower courts—so that lawyers can argue about the significance of specific classified documents.

Two hours have been set aside for the oral arguments. Griswold, 66-year-old former dean of the Harvard Law School, will open the argument and has been given one hour. Alexander Bickel, a Yale professor and constitutional authority, will argue on behalf of The Times, followed by Washington Post attorney William R. Glendon. Each has 30 minutes.

Despite the enormous size of the record in the case, many or all of the justices can be expected to be thoroughly familiar with it. They have already discussed it in private conferences Thursday and Friday.

Court aides said Justice William O. Douglas, who left the city two weeks ago for his summer home in Goose Prairie, Wash., would return for the argument, having cast his vote yesterday by telephone. Douglas, impatient with the pace of the court late in the term, frequently leaves in June when all his opinion writing has been completed.

The trial evidence—the basic framework for the high court's constitutional law decision—is similar in both cases, but there are significant differences in the way lower courts in New York and Washington handled them and conflicting results from the courts of appeals in both cities.

In New York, U.S. District Judge Murray I. Gurfein halted publication of the study on June 15 after The Times had run three installments of a series. After lengthy public and secret hearings, he ruled one week ago that the government had failed to prove more than potential "embarrassment" and official "jitters" over the disclosures and that the public interest is served by a free flow of information as a "safety valve" for a democracy in troubled times.

Judge Gurfein refused to issue an injunction against The Times but stayed his ruling pending further government appeal. This past Wednesday after several extensions of the temporary ban, the Second U.S. Circuit Court of Appeals ruled, 5 to 3, that the government should have another chance at proving that certain newly identified documents pose a security risk if revealed.

The Second Circuit Court ordered further proceedings before Judge Gurfein, but The Times immediately petitioned the Supreme Court. The Times complained that in addition to all the other reasons against press injunctions, the repeatedly extended temporary restraints were becoming "an insupportable burden on a free press."

The Justice Department never flatly opposed Supreme Court review of The Times case, but argued that a little more delay would not hurt the news value of the documents.

In Washington, The Post has been restrained since June 19, the day the second article in a Vietnam series appeared, from further publishing despite findings by Judge Gerhard A. Gesell that were similar to those of the district court in New York.

Judge Gesell was sustained in two 7-to-2 votes by the U.S. Court of Appeals here but Griswold moved in the Su-

preme Court on Friday to put The Post under publishing restrictions identical with those governing The Times. The high court granted this request yesterday.

Earlier, lawyers for The Post vigorously protested Griswold's proposal. Continued restraint would be "totally intolerable," The Post said in a legal memorandum.

"This nation is in the throes of a possibly decisive debate on the issues raised by the Vietnam conflict," the memorandum said. "Insofar as the Vietnam study is concerned, the voice of The Washington Post has been silenced for a critical week in the history of this great debate."

Glendon and other Post attorneys said the restraints of longer than a week had caused "a steady erosion of a constitutional right." They said the delay had been accomplished through "a series of successive stays based on serious but unproven claims."

The government did not challenge as "clearly erroneous" any of Judge Gesell's key findings of fact, Glendon noted. Although in free speech and free press cases the Supreme Court often declares that it is making an independent appraisal of the evidence, ordinarily the conclusions of the trial judge are regarded as binding, especially if confirmed on review by an intermediate court of appeals.

Glendon argued that the Justice Department should not be permitted to block The Post from publication after full clearance by Washington courts just because the Second Circuit Court wanted to give the government a second chance to make its case against The Times.

Both sides agree that the government made a more extensive case for its security claims before Judge Gesell on Monday than it had before Judge Gurfein the previous

Friday. It was on the basis of evidence developed for the hearing before Judge Gesell that the Second Circuit Court called on Judge Gurfein to take a new look at the case.

The Post said the government was trying to delay The Post's case "while it seeks to preserve and improve its posture in the New York Times case. "This, we believe, is totally unjustifiable," Glendon said, adding, it is "nothing less than a recipe for interminable delay."

With the government's companion injunction suit against The Boston Globe in a less-advanced stage, said Glendon, the government could next seek to put both The Times and The Post "in limbo" while successive suits are filed against other newspapers.

Glendon emphasized that the government had not filed a conventional petition for review of the ruling by the court

of appeals here, but rather a request for a temporary order that the court might wish to treat as a petition for full review. A conventional petition for review would have been the expected government action "if the government really wanted to challenge the correctness of lower court findings in the security issue, he said.

Court officials could not recall, and librarians could not find, an instance in the past when the court had held a hearing on Saturday, although until only a few years ago the justices routinely held their weekly closed conferences on Saturday.

There was no indication how soon the court would rule after the hearing. A decision could be announced later today, on Sunday, or on Monday when the court has tentatively scheduled its final meeting of the term.

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Editors' Group Defends Use of Secret War Files

The American Society of Newspaper Editors said yesterday that editors and all other Americans have the "right to publish information in the public interest without prior restraint by government except in time of war declared by Congress."

J. Edward Murray, former managing editor of the Arizona Republic and president-elect of the ASNE, was one of a panel of news and other publishing spokesmen testifying before a House subcommittee investigating government information policies in defense of the right of newspapers to publish accounts of the Pentagon study of the Indochina war.

John R. Callahan, vice president of McGraw-Hill Publications Co., another panelist, proposed that some agency independent of the executive branch, such as the General Accounting Office, be empowered to decide what information has been improperly classified and kept secret by executive agencies.

JE MURRAY

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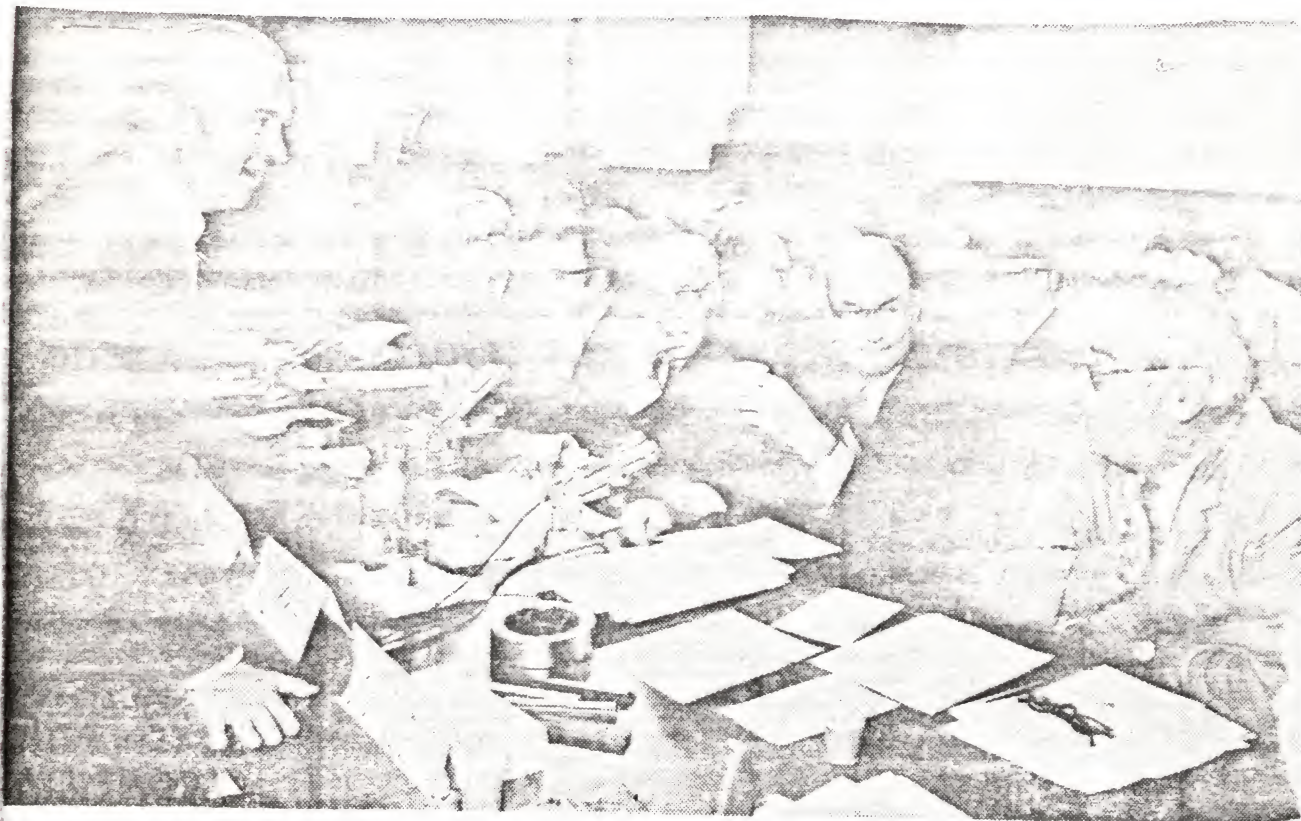
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Associated Press

Chairman William S. Moorhead (D-Pa.), left, of House Government Operations Committee, greets representatives of the news media as they appear before his group in defense of publication of the secret Pentagon war study. From left, seated, Charles A. Perlik Jr., president

of the American Newspaper Guild; J. William Roberts, Time-Life Broadcasting; John R. Callahan, McGraw-Hill Publications; J. E. Murray, president-elect of American Society of Newspaper Editors; and W. Bradford Wiley, chairman of the Association of American Publishers.

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SUPREME COURT AGREES TO RULE ON PRINTING OF VIETNAM SERIES; ARGUMENTS TO BE HEARD TODAY

RESTRAINT HOLDS

In Dissent, 4 Justices
 Support Publication
 Without a Hearing

By FRED P. GRAHAM
 Special to The New York Times

WASHINGTON, June 25 —
 The Supreme Court agreed to-
 day to hear arguments tomor-
 row on the Government's ef-
 fort to enjoin The New York
 Times and The Washington
 Post from publishing material
 from the Pentagon papers on
 Vietnam.

In two brief orders signed
 by Chief Justice Warren E.
 Burger, the court also placed
 both The Times and The Post
 under equal publication re-
 strictions, based upon the re-
 strictions imposed upon The
 Times by the United States
 Court of Appeals for the Sec-
 ond Circuit.

Four Justices — Hugo L.
 Black, William O. Douglas,
 William J. Brennan Jr. and
 Thurgood Marshall — declared
 in a dissent that they favored
 freeing both newspapers to
 print, without hearing argu-
 ments.

Lists Required From U.S.

The Justice Department was
 required to file with the Court
 and the newspapers' lawyers
 by 5 P.M. today lists of any
 portions of the 47-volume Pen-
 tagon archive that the Gov-
 ernment asserted would inflict
 "grave and immediate danger"
 to the nation's security if dis-
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The Justices' order was issued in the early afternoon, and the call for the list by 5 P.M. touched off feverish activity in the Justice Department's Internal Security Division, which is handling the efforts to suppress the articles. The Government had filed a 22-page typed list of "dangerous" documents at an earlier stage, and by the 5 P.M. deadline it added a further list of items that reportedly swept vast portions of the Pentagon papers into the "dangerous" category.

Under the order issued today, both newspapers are free to publish in their Saturday issues any other information in the study. But they may not print any items on the Government's "dangerous" list until the Supreme Court decides the cases.

Awaits Court Decision

The New York Times said that it would not resume the series on the Pentagon archive on Saturday because the matter was before the Court, and that printing an article whose content was dictated by Government officials would amount to submitting to censorship.

The Times series on the origins of the Vietnam war, which included publication of docu-

ments accompanying the study, appeared on June 13, 14 and 15 before it was halted by the litigation that is now before the Supreme Court.

The Washington Post said that it likewise would not resume publication of material from the archive.

Justice Black, Douglas, Brennan and Marshall also dissented from the part of the order that restrained the newspapers from publishing certain material.

Today's order was issued after the justices met in conferences this morning, and communicated by telephone with Justice Douglas, who is vacationing at Goose Prairie, Wash.

Justice Douglas's office announced that he was flying back and was expected in Washington tonight.

The importance of the case was underscored by the court's decision to schedule a rare Saturday session to hear arguments. Solicitor General Erwin N. Griswold has been granted one hour to argue for the Government. Alexander M. Bickel, a Yale law professor who represents The Times, and William R. Glendon of Washington, The Post's lawyer, will argue for 30 minutes each.

No mention was made in the Supreme Court's order of an "in camera" hearing, the kind that was conducted by the lower courts. The order did say that secret briefs or sealed portions of the lower court records could be submitted to the justices.

As soon as the order was issued, court officials were besieged with requests from journalists, lawyers, scholars and

the curious for seats in the chamber. It seats about 300 people.

No hint was given as to when the court's decision would come. In similar emergency situations in the past, the justices have sometimes issued their decision quickly, with written opinions to follow.

Delay Seen Likely

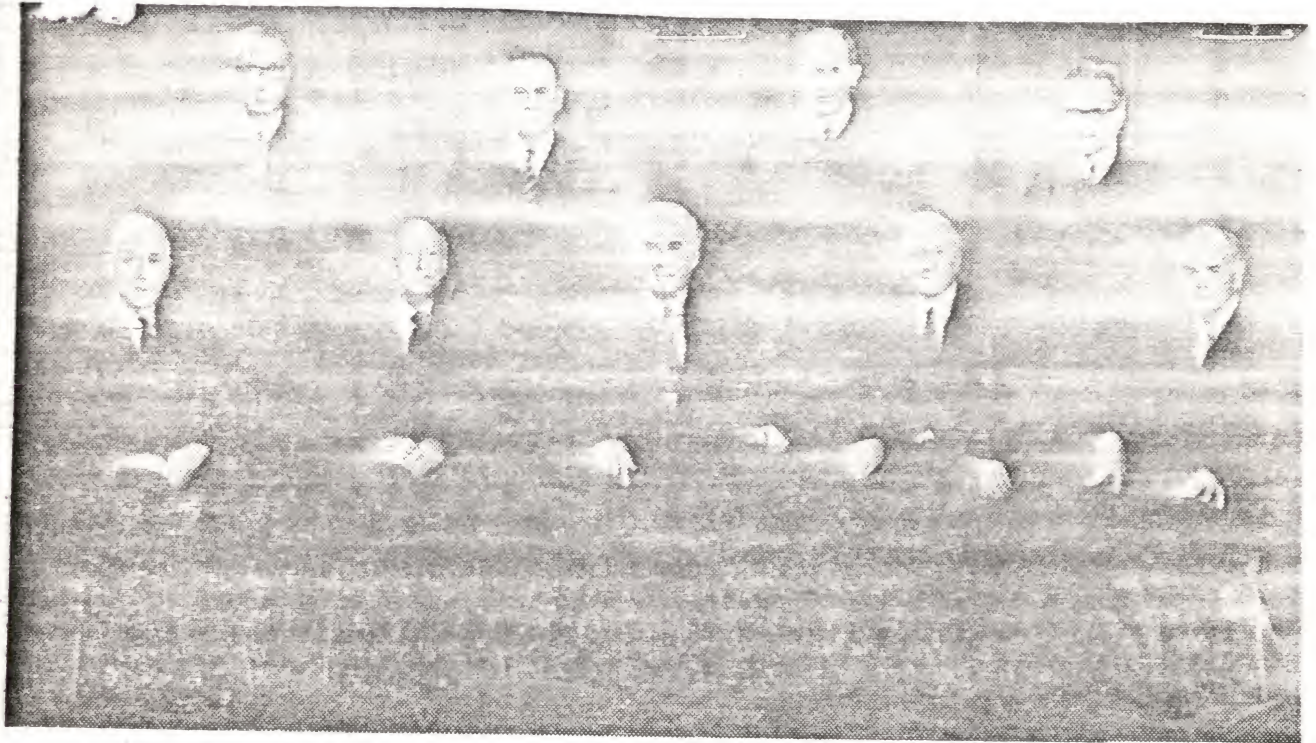
However, in this instance, some delay seems likely because of the task of checking the Justice Department's lengthy "dangerous" list against the 7,000-page study. The court is scheduled to hold its final decision-making session Monday morning, but it has been known to issue decisions during a weekend.

Today's terse orders broke legal ground. The Supreme Court had never before re-

strained a newspaper's publication of an article, and had not previously ruled on a case involving an attempted "prior restraint" by the courts of a newspaper article.

The major benchmark for the courts has been a statement that the Supreme Court made in a 1931 libel decision, *Near v. Minnesota*. In it, the court said in passing that under certain circumstances of extreme emergency—the opinion mentioned the publication of a troopship's sailing date or of battle plans—courts could block publication, despite the First Amendment's guarantee of press freedom.

The cases to be heard tomorrow will give the Supreme Court its first opportunity since then to comment on what power, if any, the courts have to restrain the press from publishing news.



United Press International

THE SUPREME COURT: Chief Justice Warren E. Burger with Associate Justices. From left, front: John M. Harlan, Hugo L. Black, Mr. Burger, William O. Douglas and William J. Brennan Jr. Behind them, from the left, are Thurgood Marshall, Potter Stewart, Byron R. White and Harry A. Blackmun. They posed early this year.

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Papers Deny Rumor They Are Passing Around War Study

By William Greider

Washington Post Staff Writer

At first glance it looks like a coast-to-coast game of "keep-away," with newspapers tossing the Pentagon's papers around among themselves while the Justice Department chases futilely after them with injunction petitions.

But the editors of seven newspapers that have published stories on the still-classified documents on Vietnam deny that there has been any conspiracy among them. The cross-country leaking, according to them,

is the result of the normal competitive urge of newspapers scrambling to get in on a big story.

The chronology of events apparently has convinced a lot of people that the newspapers have been helping one another. "It's all over the place," conceded James F. Hoge Jr., editor of the Chicago Sun-Times. "It's one of the first questions people ask me."

Hoge's answer is: "No, hell, no."

In Boston, U.S. Attorney Herbert F. Travers Jr. said publicly that he hoped The Boston Globe did not pass

on its documents to other newspapers. Such an action by The Globe, The Washington Post or The Times would violate the temporary injunctions against them.

In Washington, White House communications director Herb Klein said he has heard many people ask the same question in his travels this week. "My answer is that I don't know," Klein said. Klein doubts that government investigators are actively pursuing the question, saying they are too busy with other aspects of the controversy.

At The New York Times,

where it all started with the June 13 issue, Managing Editor A. M. Rosenthal said: "Obviously, we are not giving anything to anyone."

After The Times was enjoined by a federal court June 15 from continuing its articles, The Washington Post next appeared with its own series. After it was enjoined, The Boston Globe began publishing. Then it was enjoined.

Since then, the Chicago Sun-Times, the Los Angeles Times, the Detroit Free Press and other papers in the Knight chain have printed stories which they said were based on the docu-

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ments. Yesterday the St. Louis Post-Dispatch joined the club. The Justice Department has not sought injunctions against these four.

All seven deny that they got or gave the Vietnam policy papers to any other newspaper. Beyond that, they would not discuss where they did get them.

Derick Daniels, executive editor of the Detroit Free Press, said: "Seeing that the given nature of the business is competitive, we're all competing with each other."

Howard Simons, deputy managing editor of The Washington Post, said: "I can state categorically there

has been no collusion on documents between The Washington Post and any other newspapers anywhere."

But some others have proposed such an arrangement. The Post, The Times and The Globe all have received requests or offers from other newspapers and from television newsmen to take the enjoined material off their hands.

Rosenthal of The Times said: "I've had some requests from people, both at home and abroad, who are willing to share my cross. I told them we have no intention of sharing anything."

Robert Healy, executive editor of The Boston Globe, said his paper has received many such requests, including two from Canadian publications that argued they would not be subject to U.S. court injunctions.

All three newspapers would be subject to contempt proceedings if they passed on the controversial documents to permit publication elsewhere.

In New York, Rosenthal remarked: "I don't mind going to jail for freedom of the press, but I don't want to go to jail for being stupid."



United Press International

St. Louis Post-Dispatch news editor George Londa looks over his paper's stories based on the Pentagon's secret study of U.S. involvement in Vietnam war.

Papers Defer On Printing Cleared Data

By Sanford J. Ungar
Washington Post Staff Writer

The Washington Post and The New York Times decided independently last night to defer publication of their articles based on secret Pentagon papers, after the Supreme Court continued a ban on use of any material from documents listed by the government as especially sensitive.

In compliance with a Supreme Court directive, the government submitted that list to attorneys for both newspapers at 5 p.m. yesterday.

"It is so substantial a list," said Post executive editor Benjamin C. Bradlee, "as to make it physically impossible for us to decide, in the time allowed, what we could print, even if we chose to print anything."

Bradlee was not permitted to see the list, which was itself classified "top secret" by the government, because he does not have a security clearance from the Defense Department.

He said he had made his decision on the basis of advice from three Post lawyers and a Post reporter, George C. Wilson, who have been granted special clearance for the purposes of court proceedings concerning the secret Pentagon study on the origins of the Vietnam war.

Privately obtained copies of the 47-volume Pentagon study, or of excerpts from it, were the basis of two articles printed in The Post and three in The Times before the government took court action against both newspapers.

In New York, A. M. Rosenthal, managing editor of The Times, said, "we're not printing" further articles in the series, pending further action by the Supreme Court, which is hearing oral arguments on the cases today.

"We wouldn't be able to print anything but a truncated version," Rosenthal said. "In fact, at this point (5:15 p.m. EDT), I'm not sure what we'd be able to print. And that, of course, is the issue before the Supreme Court."

Earlier in the day, Rosenthal contended that to resume publication on the government's terms would require at least temporary compliance with restrictions on classified material.

"That would be publishing under conditions," he said. "We're not inclined to do that."

Bradlee stressed that the Post decision had been made only after the newspaper was informed of the nature of the government's list.

"We felt that the public right to know demanded that we give serious consideration to printing [another installment in the Post series], if we could print anything of substance without violating the court order," the Post editor said.

The Justice Department, in a statement issued at 8:30 p.m., said that the newspapers themselves were responsible for their inability to publish new articles based on the Pentagon study today.

"The Department of Justice has repeatedly requested that the New York Times and The Washington Post disclose to

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the court contents of the documents in their possession," a spokesman said.

"Both newspapers have consistently refused to do so. Had they made that disclosure, it would have been possible for the department to tell each newspaper which passages and sections in their documents were covered by the court injunction. The Times and The Post chose instead to adhere to their position and as a result are unable to print without being in jeopardy of violating the court order," he said.

Both newspapers have insisted that to produce the documents in their possession might jeopardize their confidential sources.

In both the Times and Post cases, federal judges have refused to order that the documents be produced in court. Yesterday's order from the Supreme Court left those lower court rulings intact.

Following a policy adopted earlier in the week, The Post is printing in today's editions wire service versions of articles in Friday's St. Louis Post-Dispatch and Saturday's Chicago Sun-Times.

The Post-Dispatch said that copies of the documents it had obtained bore no security classification. The newspaper added, however, that there was a blank space at the bottom of each page where it appears a strip of paper had been laid over the place where a security classification is ordinarily stamped.

The Boston Globe, the third newspaper taken into court by the government, said it would run the Post-Dispatch report verbatim.

Robert Healey, executive editor of The Globe, said a copy of the story which originally appeared in St. Louis had been flown to Boston yesterday for The Globe's use.

The Globe decision was taken after obtaining from U.S. District Court Judge Anthony J. J. in Boston a clarification of the restraining order he originally issued against the newspaper earlier in the week.

Julian's clarification allows The Globe to publish any material which had already appeared in other newspapers.

Other newspapers involved in the controversy reported their plans as follows:

- James F. Hoge Jr., editor of the Chicago Sun-Times, said, "We've got stories moving [today] and [Sunday] based on a number of sources, though not necessarily from the Pentagon documents exclusively."

- The executive vice-president and editor of the Los Angeles Times, Nick B. Williams, said yesterday that "at this moment, we have no plans" to run further installments based on the Pentagon study.

- Derrick Daniels, news director for the Knight newspaper chain, said "we have nothing scheduled to run" today.

- The city editor of the Post-Dispatch said in St. Louis, "I would rather not comment." An official of The Baltimore Sun, refusing to permit his name to be used, said the same thing.

All of the newspapers except The Sun indicated, however, that they would continue to print wire service reports of articles appearing in other newspapers based on the Pentagon documents.

The Chicago Tribune, which said it had tried but was unable to obtain a copy of the Pentagon study, said that it would not be fair for some newspapers to publish articles drawn from it while others could not.

"We suggest that the whole matter of further publication be held in abeyance until the entire record is studied by an impartial group of editors and government officials skilled in sorting out the perils that indiscriminate publication of classified documents would entail," the Tribune said in a formal statement, according to United Press International.

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Secrecy loses its secrets

NO matter what else it does, the leak of the Pentagon papers has focused attention on how the bureaucracy classifies (and misclassifies) so-called secrets.

At the State Department and Pentagon some officials are now conceding that they sometimes stamp "secret" on messages to make them seem more important so they will be read by higher-ups.

And some classified cables to the State Department and Central Intelligence Agency are reported to contain material that already has been published in newspapers available to any spy with 10 cents.

The most useful information on the subject has come from William Florence, who recently retired after 23

years as a Pentagon expert on security classification. He told a House subcommittee looking into government secrecy that:

"The disclosure of information in at least 99.5 per cent of those classified documents could not be prejudicial to the defense interests of the nation."

Mr. Florence thinks there are "at least 20 million" classified documents floating around or in storage in the Defense Department alone. He estimated that the taxpayers pay unnecessary costs of \$50 million a year because of the classification system. Some time ago, Mr. Florence testified, one of the service chiefs wrote to his opposite numbers that too many papers were being marked "Top Secret" and recommending that the classification be used less.

"Believe it or not," Mr. Florence said, "that note itself was marked 'Top Secret.'"

We believe it. We also believe Congress should stick with the issue, even after its publicity value fades, until the nonsensical system is reformed.

The goal should be a minimum number of real secrets protected from the nation's enemies, not a maximum number of inconsequential facts withheld from the public.

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Freund: On 'Prior Restraint'

By PAUL A. FREUND 33

CAMBRIDGE, Mass.—Everything secret degenerates, was Lord Acton's warning. Sunlight is the most powerful of disinfectants, was Justice Brandeis' admonition. But concrete issues of disclosure and secrecy have a way of making even the most ardent libertarians see that the right to know is not one-dimensional, all warp and no woof. Brandeis himself was the intellectual father of a legal right of privacy.

The press itself has not spurned the shelter of the copyright law or legal protection against the pirating of news stories by competitors; and the media are not insensitive to the value of preserving the confidentiality of their sources of information. In the long run, it is perceived, the business of serving the public boldly and zealously may require some protective shelter along the way.

Surely, however, the position is very different in the business of government? Not entirely. The framers of the Constitution scrupulously maintained the secrecy of their deliberations at the convention of 1787. Madison's notes, the best record, were not published until his death, forty years later. Secrecy, it is fair to suppose, promoted free and candid debate within the convention, and vitally encouraged the shifts in voting, the great compromises, calculated ambiguities and deliberate lacunae that made possible in the end a masterful charter. I sometimes wonder irreverently whether we would have had a Constitution at all if the convention had been reported by daily columnists (affectionately called by Charles Evans Hughes the daily calumnists).

The original Constitution contained no guarantee of freedom of speech, save for members of Congress, and none for the press. When the first Congress proposed the First Amendment, the Senate, it is worth remembering, sat in secrecy. For five years the Senate held its debates behind closed doors. Believing in the liberty of the press, at the same time the members believed it right to shield their own discussions from the public and disclose only the final actions taken.

These early precedents, conscientiously inspired as they were, are not cited as models for our day. The point is, on the contrary, that we cannot find ready-made directions for our particular problems of secrecy and disclosure simply by marching to the uncertain trumpets of the Founding Fathers.

The beginning of wisdom is to recognize that there are honest issues to be resolved, and that the critical questions are who shall decide those issues, by what standards and by what procedures. The original understanding of the First Amendment was probably the Blackstonian view that a publisher was not to be subjected to "previous restraint"—that is, precensorship—but would be liable civilly or criminally for a publication that violated the law, whether of defamation or incitement to crime or disclosure of state secrets. Although we have long since recognized limits on prosecution as well, our legal tradition has special repugnance toward prior restraint.

At first blush the distinction may seem absurd, even perverse. If a writer can be imprisoned for publishing the unpublishable, why not subject him to the preventive thrust of an injunction, which simply warns him that publication will bring on punishment for contempt of the court's decree? The question is paradoxical only because it assumes the illegal nature of the publication. In a very clear case there would be no reason to withhold an injunction, the most tolerant judge would doubtless restrain the publication of secret troop movements in time of war, or of draft judicial opinions in a pending lawsuit.

But the general rules are made for

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the marginal, debatable cases, and in this gray area procedural differences become crucial. In an injunction suit the judge sits without a jury, and the right to a jury trial on all the issues was a hard-won victory for the press against the state, going back to Peter Zenger's case in New York in 1735. There is a further procedural point. If a person publishes in violation of an injunction while the case is being tried or appealed, he is automatically guilty of contempt, even though he ultimately succeeds in having the injunction set aside; in a criminal case, on the other hand, the publisher can gamble on his ultimate vindication, for if he is acquitted he escapes all penalty. In the marginal case, prior restraint could amount to an overkill.

Risk for risk, the law has opted for underkill in duels over publication. That is the meaning and the message behind the seeming technicalities of the law on prior restraint.

The law's preoccupation with the procedural aspects of liberty at the litigation stage suggests that some comparable concern be shown at the earlier stages. The drama of the Pentagon papers, regardless of the immediate outcome, could have its greatest impact by stimulating a full-dress examination of our security classification procedures and the scope of executive privilege in relation to Congress. There, too, the central issue is one of overkill protective of the Government.

Paul A. Freund teaches constitutional law at Harvard and is author of "On Law and Justice."

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REC-47

C. McLeck

UPI-117

(NAB)

WASHINGTON--THE NATIONAL ASSOCIATION OF BROADCASTERS' BOARD OF DIRECTORS TODAY UPHELD THE RIGHT OF NEWSPAPERS TO PUBLISH STORIES BASED ON THE PENTAGON'S SECRET VIETNAM WAR STUDY.

"WITHOUT ATTEMPTING TO PASS JUDGMENT ON THE MEANS BY WHICH THE PENTAGON PAPERS BECAME AVAILABLE, THIS BOARD BELIEVES IT IS ESSENTIAL TO AN OPEN AND FREE SOCIETY THAT ALL MEDIA BE FREE TO PRESENT TO THE PUBLIC ANY AND ALL INFORMATION WITHOUT BEING SUBJECTED TO PRIOR GOVERNMENTAL RESTRAINT," THE NAB DIRECTORS SAID.

THEY ALSO ADOPTED A RESOLUTION BACKING CBS PRESIDENT FRANK STANTON IN HIS REFUSAL TO GIVE A HOUSE SUBCOMMITTEE MATERIALS INVOLVED IN PRODUCING THE CONTROVERSIAL DOCUMENTARY, "THE SELLING OF THE PENTAGON."

THEY SAID THEY SUPPORTED STANTON "IN HIS EFFORTS TO ESTABLISH ONCE AND FOR ALL THAT ELECTRONIC JOURNALISM IS COVERED BY THE SAME FIRST AMENDMENT GUARANTEE ENJOYED BY THE PRINTED MEDIA."

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WASHINGTON CAPITAL NEWS SERVICE

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REC-34
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UPI-58

(COURT HEARING)

WASHINGTON--THE SUPREME COURT WAS TOLD TODAY THAT IF IT GOES ALONG WITH THE GOVERNMENT'S EFFORT TO BLOCK PUBLICATION OF MORE OF THE SECRET PENTAGON PAPERS ON VIETNAM WAR PLANNING, IT WILL BE PERMITTING A KIND OF CENSORSHIP WHICH OTHER FEDERAL COURTS HELD UNCONSTITUTIONAL.

THE ARGUMENT WAS MADE BY THE WASHINGTON POST IN RESPONSE TO A JUSTICE DEPARTMENT APPEAL OF ANN APPEALS COURT DECISION THAT THE POST COULD RESUME A SERIES ON THE VOLUMINOUS RECORD OF VIETNAM POLICY-MAKING AT THE PENTAGON.

POST ATTORNEYS, IN A BRIEF FILED THIS MORNING, SAID IF THE COURT GRANTED THE APPEAL, THE GOVERNMENT, "THROUGH APPLICATIONS FOR SUCCESSIVE STAYS, WILL HAVE ACHIEVED A CENSORIAL OBJECTIVE WHICH TWO COURTS HAVE HELD TO BE UNCONSTITUTIONAL."

A DISTRICT COURT AND THE WASHINGTON, D.C., COURT OF APPEALS BOTH RULED AGAINST THE GOVERNMENT AND IN FAVOR OF THE POST.

FRIDAY IS THE REGULAR DAY THAT COURT JUSTICES GET TOGETHER TO CONFER ABOUT KEY MATTERS BEFORE THEM. THEY WERE CONFRONTED WITH THE PRESS VS. GOVERNMENT BATTLE AS THEY SOUGHT TO WIND UP ON MONDAY A LONG, DIFFICULT TERM.

ALSO BEFORE THE COURT WAS AN APPEAL BY THE NEW YORK TIMES, THE FIRST OF A GROWING NUMBER OF NEWSPAPERS WHICH PUBLISHED WHAT THEY SAID WERE ACCOUNTS FROM THE PENTAGON PAPERS, TO OVERTURN ANOTHER APPEALS COURT ORDER RESTRICTING ITS PUBLICATION OF THE DOCUMENTS.

PARTLY BECAUSE OF ITS EFFORT TO ADJOURN THE TERM, AND ALSO BECAUSE OF INSISTENCE BY THE NEWSPAPERS THAT PROMPT ACTION WAS URGENTLY NEEDED IN THE CASE, THE COURT WAS EXPECTED TO TAKE SOME KIND OF ACTION TODAY. BUT THERE WAS NO GUIDANCE WHATEVER FROM COURT SOURCES AS TO WHEN AND WHAT IT MIGHT BE.

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WASHINGTON CAPITAL NEWS SERVICE

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IN ABSENCE OF A COURT RULING TO CONTINUE A RESTRAINING ORDER, THE POST WOULD BE FREE AFTER 6 P.M. EDT TODAY TO RESUME ITS SERIES. THE TIMES WOULD BE FREE TO RESUME SOME STORIES, BUT STILL WOULD BE REQUIRED TO WITHHOLD OTHERS THE GOVERNMENT SAYS ARE PARTICULARLY SENSITIVE.

THE GOVERNMENT'S APPEAL IN THE POST CASE, IN ESSENCE, ASKED THAT THE POST BE RESTRAINED IN THE SAME MANNER AS THE TIMES -- MEANING IT WOULD BE FREE TO PUBLISH SOME PORTIONS OF OR ACCOUNTS OF THE DOCUMENTS IT HAS, BUT NOT OTHERS.

THE POST DESCRIBED AS "TOTALLY INTOLERABLE" THE EFFORT TO BRING THE POST CASE INTO THE SAME LEGAL POSTURE AS THAT OF THE TIMES.

"THE REASONS ... HAVE NOTHING TO DO WITH MERITS OF THIS CASE," THE POST TOLD THE COURT. "RATHER, THE GOVERNMENT SIMPLY WISHES TO STAY THIS CASE WHILE IT SEEKS TO PRESERVE AND IMPROVE ITS POSTURE IN THE NEW YORK TIMES CASE. THIS WE BELIEVE IS TOTALLY UNJUSTIFIABLE.

"THERE CAN BE ABSOLUTELY NO JUSTIFICATION FOR DENYING THE CONSTITUTIONAL RIGHTS OF THE WASHINGTON POST MERELY BECAUSE THE GOVERNMENT HOPES THAT ON A THIRD HEARING, IT CAN PROVE WHAT IT HAS FAILED TO PROVE IN THE PREVIOUS TWO."

U.S. SOLICITOR GENERAL ERWIN N. GRISWOLD TOLD THE COURT THURSDAY THAT ADDITIONAL POST STORIES BASED ON THE LEAKED REPORT WOULD DAMAGE NATIONAL SECURITY AND U.S. FOREIGN RELATIONS "BEYOND REPAIR." IN ADDITION, HE SAID, MORE STORIES WOULD MAKE THE NEW YORK TIMES CASE A MOOT QUESTION.

"THE COMPELLING CONSIDERATION IS THAT A BRIEF DELAY IN PUBLICATION OF THIS MATERIAL BY THE POST WOULD NOT PREJUDICE THE PUBLIC INTERESTS, SINCE SUCH DELAY WOULD NOT DETRACT FROM THE IMPORTANCE OF THE MATERIAL OR DIMINISH ITS SIGNIFICANCE IF IT ULTIMATELY WERE PUBLISHED," HE SAID.

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UPI-101

(COURT HEARING)

WASHINGTON--THE SUPREME COURT TODAY AGREED TO DECIDE WHETHER THE
WASHINGTON POST AND THE NEW YORK TIMES MAY PRINT SECRET PENTAGON MATERIAL
ON THE ORIGINS OF THE VIETNAM WAR AND SET ARGUMENTS ON THE
QUESTION FOR SATURDAY AT 11:00 A.M. EDT.

6/25--GE127P

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-102

ADD 1 COURT HEARING, WASHINGTON (UPI-101)

THE COURT IN TWO BRIEF ORDERS CONSOLIDATED THE TWO CASES AND
CONTINUED THE RESTRAINT ALREADY IMPOSED ON THE NEW YORK TIMES BY THE
2ND U.S. CIRCUIT COURT OF APPEALS. THE ORDERS BROUGHT THE
WASHINGTON POST UNDER THE SAME RESTRAINT.

6/25--GE130P

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UPI-103

ADD 2 COURT HEARING, WASHINGTON

UNDER LOWER COURT ORDERS THE POST WOULD HAVE BEEN ABLE TO PROCEED WITH ARTICLES ON ALL THE SECRET DOCUMENTS INSATURDAY MORNING PAPERS. THE TIMES COULD HAVE PRINTED ONLY THOSE WHICH THE GOVERNMENT CONSIDERS NOT DAMAGING TO THE PUBLIC INTEREST.

THE COURT SAID THE "SPECIAL APPENDIX" -- A LIST OF DOCUMENTS THE JUSTICE DEPARTMENT IS ESPECIALLY ANXIOUS TO SUPPRESS -- MUST BE FILED IN THE SUPREME COURT BY 5:00 P.M. TODAY.

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UPI-104

ADD 3 COURT HEARING, WASHINGTON

THE COURT SAID ANY OTHER ITEMS WHICH THE GOVERNMENT MAY HAVE
SPECIFIED AS UNPUBLISHABLE SINCE THE 2ND CIRCUIT'S OPINION IN THE
TIMES CASE COULD BE INCLUDED AND THAT THE TIMES SHOULD BE NOTIFIED AS
TO WHAT THESE ITEMS WERE.

6/25--GE134P

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UPI-105

ADD 4 COURT HEARING, WASHINGTON

THE VOTE IN THE COURT WAS 5-4 WITH JUSTICES HUGO L. BLACK, WILLIAM O. DOUGLAS, WILLIAM J. BRENNAN JR., AND THURGOOD MARSHALL VOTING TO DENY THE GOVERNMENT'S APPEALS AND LET THE PAPERS GO AHEAD UNRESTRICTED.

THE COURT TOOK THE ACTION AT A REGULAR FRIDAY CONFERENCE THAT PRECEDES ITS MONDAY COURT SESSIONS. IT HAD INTENDED TO END THE REGULAR TERM ON MONDAY, BUT BY ACCEPTING THE CASE -- WITH NO INDICATION WHEN A RULING WOULD COME -- ADJOURNMENT TIME WAS NOW UNCERTAIN.

ONE OF THE NINE JUSTICES, WILLIAM O. DOUGLAS, ALREADY HAD LEFT WASHINGTON FOR HIS NORTHWEST SUMMER HOME. HE ARRANGED TO FLY BACK TO THE CAPITAL TONIGHT TO PARTICIPATE IN SATURDAY'S HEARING AND THE SUBSEQUENT DECISION.

6/25--GE138P

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REC-23

UPI-8

(VIET REPORTS)

WASHINGTON--THE SUPREME COURT IN THE CLOSING DAYS OF ITS CURRENT SESSION CONSIDERED TODAY APPEALS FROM THE FEDERAL GOVERNMENT AND THE NEW YORK TIMES OVER PUBLICATION OF A SECRET PENTAGON REPORT ON THE VIETNAM WAR.

UNLESS THE COURT TAKES SOME ACTION, THE WASHINGTON POST WILL BE PERMITTED TO RESUME PUBLICATION OF THE DOCUMENTS AT 6 P.M. TODAY. THE COURT WAS EXPECTED TO REVIEW THE CASES BECAUSE OF THE ISSUES INVOLVED -- FREEDOM OF THE PRESS AND NATIONAL SECURITY -- AND THE CONFLICTING LOWER COURT RULINGS IN SEPARATE TIMES AND POST CASES.

THE TIMES, IN ITS APPEAL TO THE HIGH COURT, CLAIMED AN APPEALS COURT PUT UNDUE RESTRAINTS ON IT. THE APPEALS COURT ORDERED A FEDERAL DISTRICT COURT JUDGE TO DECIDE WHAT PORTIONS OF THE REPORT THE TIMES COULD PRINT.

THE TIMES COULD, ACCORDING TO THE APPEALS COURT RULING, RESUME PUBLICATION AT 5 P.M. EDT TODAY OF THE PARTS OF THE REPORT NOT CONSIDERED CLASSIFIED.

THE CURRENT SUPREME COURT SESSION IS EXPECTED TO END MONDAY.

THE FEDERAL GOVERNMENT ASKED THE SUPREME COURT TO STUDY THE CASE AGAINST THE POST AFTER THE U.S. CIRCUIT COURT OF APPEALS IN WASHINGTON IN A 7-2 DECISION REFUSED THURSDAY TO RECONSIDER THE CASE.

THE CHICAGO TRIBUNE, ADMITTING "WE MAY BE VULNERABLE TO A CHARGE OF SOUR GRAPES," SUGGESTED IN A FRONT PAGE EDITORIAL TODAY THAT A GROUP OF EDITORS AND GOVERNMENT OFFICIALS STUDY THE SECRET REPORTS, DECIDE WHAT COULD BE PUBLISHED AND DISTRIBUTE THE MATERIAL TO ALL THE NEWS MEDIA. THE TRIBUNE SAID IT DID NOT HAVE COPIES OF THE REPORT.

"WE SUGGEST THAT THE WHOLE MATTER OF FURTHER PUBLICATION BE HELD IN ABEYANCE UNTIL THE ENTIRE RECORD IS STUDIED BY AN IMPARTIAL GROUP OF EDITORS AND GOVERNMENT OFFICIALS SKILLED IN SORTING OUT THE PERILS THAT INDISCRIMINATE PUBLICATION OF CLASSIFIED DOCUMENTS WOULD ENTAIL," IT SAID.

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WASHINGTON CAPITAL NEWS SERVICE

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A DISTRICT COURT HEARING ON THE CASE OF THE BOSTON GLOBE, THE THIRD NEWSPAPER ENJOINED FROM PUBLISHING THE PENTAGON REPORT, HAD BEEN SCHEDULED FOR TODAY BUT WAS POSTPONED UNTIL TUESDAY. DISTRICT JUDGE ANTHONY J. JULIAN GAVE NO REASON FOR THE RESCHEDULING.

THE CHICAGO SUN-TIMES IN A COPYRIGHTED STORY IN TODAY'S EDITIONS SAID PRESIDENT EISENHOWER SECRETLY ESTABLISHED A NATIONAL POLICY DESIGNED TO ELIMINATE COMMUNIST CONTROL OF NORTH VIETNAM AND REUNITE THE TWO VIETNAMS UNDER A PRO-AMERICAN GOVERNMENT.

THE STORY ALSO SAID A MONTH AFTER THE JOHNSON ADMINISTRATION STEPPED UP BOMBING TO BREAK THE WILL OF THE NORTH VIETNAMESE, TOP U.S. OFFICIALS CONCLUDED THAT THE BOMBING WOULD NOT ACCOMPLISH THAT PURPOSE.

- 0 -

WASHINGTON--THE NATION'S NEWS MEDIA, IN CONFRONTATION WITH TWO BRANCHES OF THE GOVERNMENT GETS A CHANCE TODAY TO TELL ITS SIDE OF THE STORY TO AT LEAST ONE OF THEM.

REPRESENTATIVES OF THE NEWSPAPER AND BROADCASTING INDUSTRY WERE CALLED TO TESTIFY BEFORE THE TRADITIONALLY FRIENDLY HOUSE "FREEDOM OF INFORMATION" SUBCOMMITTEE.

THE PANEL IS STUDYING FEDERAL CLASSIFICATION POLICIES AND PRACTICES, SEEKING TO FIND OUT WHETHER THE GOVERNMENT IS IMPROPERLY USING THE EXCUSE OF "NATIONAL SECURITY" INTERESTS AS A MEANS OF KEEPING INFORMATION FROM THE PUBLIC.

ON TAP TODAY AS WITNESSES WERE PETE MCKNIGHT, EDITOR OF THE CHARLOTTE, N.C., OBSERVER AND PRESIDENT OF THE AMERICAN SOCIETY OF NEWSPAPER EDITORS; RICHARD P. KLEEMAN, WASHINGTON CORRESPONDENT FOR THE MINNEAPOLIS TRIBUNE AND CHAIRMAN OF THE FREEDOM OF INFORMATION COMMITTEE OF SIGMA DELTA CHI JOURNALISM SOCIETY; CHARLES A. PERLIK, PRESIDENT OF THE AMERICAN NEWSPAPER GUILD; W. BRADFORD WILEY, OF JOHN WILEY & SONS, PUBLISHERS, CHAIRMAN OF THE BOARD, ASSOCIATION OF AMERICAN PUBLISHERS, AND J. W. ROBERTS, WASHINGTON BUREAU CHIEF FOR TIME-LIFE BROADCASTING AND CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION.

ALSO EXPECTED WAS A REPRESENTATIVE OF THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION.

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 by Letter *10/27/75*
 Per FOIA Request *re Richard [unclear] THB/c*

REC-47

(VIET REPORTS)

ST. LOUIS, MO.--FORMER DEFENSE SECRETARY ROBERT S. MCNAMARA TOLD PRESIDENT JOHNSON IN LATE 1966 THAT THE PACIFICATION PROGRAM IN VIETNAM WAS A "DISAPPOINTMENT" AND "IF ANYTHING GONE BACKWARD," THE ST. LOUIS POST-DISPATCH REPORTED TODAY.

THE NEWSPAPER PRINTED THE FULL TEXT OF A MEMORANDUM FROM MCNAMARA TO JOHNSON, DATED OCT. 14, 1966, WHICH IT SAID WAS INCLUDED IN PARTS OF A PENTAGON HISTORY OF THE UNITED STATES INVOLVEMENT IN VIETNAM.

THE POST-DISPATCH SAID IT HAD OBTAINED XEROXED PARTS OF THE HISTORY, BUT, "ALTHOUGH OTHER PARTS QUOTED BY OTHER NEWSPAPERS IN THE LAST TWO WEEKS HAVE BEEN DESCRIBED AS TOP SECRET, THE SEVERAL HUNDRED XEROXED PAGES OBTAINED ... BORE NO SECURITY CLASSIFICATION."

"EACH XEROXED PAGE HAD A BLANK SPACE AT THE BOTTOM, HOWEVER, WHERE A STRIP OF PAPER HAD BEEN LAID OVER THE PLACE WHERE A SECURITY LABEL USUALLY IS STAMPED," THE NEWSPAPER SAID.

MCNAMARA WAS QUOTED AS SAYING IN THE MEMORANDUM, "PACIFICATION HAS IF ANYTHING GONE BACKWARD.

"PACIFICATION IS A BAD DISAPPOINTMENT."

"IN ESSENCE, WE FIND OURSELVES--FROM THE POINT OF VIEW OF THE IMPORTANT WAR (FOR THE COMPLICITY OF THE PEOPLE)--NO BETTER, AND IF ANYTHING, WORSE OFF," THE DEFENSE SECRETARY WAS QUOTED IN COMPARING THE SITUATION WITH THAT OF 18 MONTHS EARLIER.

THE POST-DISPATCH'S ACCOMPANYING STORY CONCERNING THE MEMORANDUM WAS WRITTEN BY RICHARD DUDMAN, CHIEF OF THE NEWSPAPER'S WASHINGTON BUREAU, AND TWO OTHER WASHINGTON CORRESPONDENTS, THOMAS W. OTTENAD AND JAMES DEAKIN.

IT QUOTED MCNAMARA AS SAYING "I SEE NO REASONABLE WAY TO BRING THE WAR TO AN END SOON."

IT ADDED, "HE TOLD JOHNSON ALSO THAT THE FIRST YEAR AND A HALF OF THE BOMBING OF NORTH VIETNAM HAD FAILED TO STEM INFILTRATION OR CRACK HANOI'S MORALE.

"HE PROPOSED LEVELING OFF THE TROOP BUILD-UP AT 470,000 AND HOLDING THE BOMBING OF THE NORTH AT ITS CURRENT LEVEL. THE JOINT CHIEFS OF STAFF DISAGREED STRONGLY ON BOTH POINTS, THE DOCUMENTS SHOWED."

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UPI-110

(VIET REPORTS)

BOSTON--A HEARING ON THE GOVERNMENT'S REQUEST FOR AN INJUNCTION PROHIBITING THE BOSTON GLOBE FROM PUBLISHING ANY ACCOUNTS OF SECRET PENTAGON PAPERS HAS BEEN RESCHEDULED TO TUESDAY.

THE HEARING WAS TO BE HELD THIS MORNING, BUT U. S. DISTRICT JUDGE ANTHONY J. JULIAN ANNOUNCED THE RESCHEDULING THURSDAY, FOLLOWING HIS DECISION TO ALLOW THE GLOBE TO PRINT WIRE SERVICE STORIES INVOLVING THE CONTROVERSIAL MATERIAL.

JULIAN GAVE NO REASON FOR THE RESCHEDULING.

EDITOR THOMAS WINSHIP SAID THE RULING CAME DURING AN INFORMAL SESSION IN JULIAN'S CHAMBERS. THE COURT TUESDAY ISSUED A TEMPORARY RESTRAINING ORDER BARRING THE GLOBE FROM PRINTING ANY NEW DISCLOSURES FROM THE SOURCE MATERIAL, A 47-VOLUME STUDY OF U. S. DECISION MAKING IN SOUTHEAST ASIA.

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 INDEX

REC-8

TIMES ASKS SUPREME COURT TO END RESTRAINTS ON ITS VIETNAM SERIES; U.S. LOSES IN MOVE TO CURB POST

ACTION TODAY SEEN

8 Justices Hold Closed Session on Appeal, Will Meet Again

Excerpts from Times petition are printed on Page 12.

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, June 24 — The New York Times asked the Supreme Court today to permit it to resume publication of material from the Pentagon study of the Vietnam war.

Chief Justice Warren E. Burger and seven other Associate Justices — Justice William O. Douglas was out of town — spent several hours in conference and then left for the day, without acting on the appeal by The Times. They are expected to make a decision tomorrow.

Later today the Justice Department, turned down again by the Court of Appeals here, appealed to the Supreme Court in its effort to prevent The Washington Post from resuming publication of the same material.

Decisions in Conflict

The two appeals brought before the Supreme Court for the first time the question of any court's authority to restrain the press from publishing news that the Government says could seriously harm national security.

The prospects that the Supreme Court will hear the appeals are heightened because of the importance of the issues and also because lower courts' decisions are in conflict.

The Washington Post Times Herald _____
 The Washington Daily News _____
 The Evening Star (Washington) _____
 The Sunday Star (Washington) _____
 Daily News (New York) _____
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 The New York Times / _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
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In New York, the United States Court of Appeals for the Second Circuit placed delays and restraints upon The Times's right to publish, while the Appellate Court here held that The Post could not be enjoined from publishing the material.

Although the Supreme Court is scheduled to recess for the summer after holding a final public session Monday, it appears to have enough time to deal with the matter before then.

Closed Session Today

Tomorrow the Court will hold its usual closed Friday conference, and it is expected to decide then whether to review the two appeals. Under its rules it has complete discretion to hear the appeals or let the lower courts' decisions stand.

The rules favor review in important cases involving conflicting decisions below.

If review is granted the Justices could remain behind on Monday after they hand down

their decisions and hear the case then or they could extend the term for a few days.

The action by the Justice Department came in the form of a motion by the Solicitor General, Erwin N. Griswold, to stay The Post from resuming publication pending a decision by the Supreme Court. The purpose, Mr. Griswold said, was to place The Times and The Post on an even footing.

He added that the Court could treat his application for a stay as a petition for review of the lower courts' proceedings.

Earlier in the day The Times brought the issue formally before the Court by asking it to lift the restraint on publication. The newspaper then asked in separate papers that the Court review and overturn the decision handed down yesterday by the Second Circuit Court of Appeals.

Today was the ninth day since Federal District Judge Murray I. Gurfein halted publication of The Times series. The series, which included documents accompanying the Pentagon study, appeared on June 13, 14 and 15, after which it was restrained.

The application by The Times for an immediate lifting of the restraint was addressed to Associate Justice John M. Harlan, who has jurisdiction over emergency petitions originating from the Second Judicial Circuit, which includes New York.

He referred the papers to the entire court because of the importance of the issues involved. Lawyers for The Times asked for oral arguments this afternoon on the sole question of lifting the restraint, but the request was not granted.

No Longer Current . . .

In the application The Times complained that the United States Court of Appeals here had refused to enjoin The Washington Post from printing materials from the Pentagon papers, so it would be free to resume publication in its Saturday editions. The articles, plus the material that has appeared in other newspapers would inflict "irreparable harm" on its interests. The Times argued. "News no longer current is stale and of severely diminished intrinsic value," it explained.

The Government, in a memorandum filed by Solicitor General Erwin N. Griswold, replied that for The Times to print the material now, would render moot the very issue of restraint that it had asked the Justices to decide. Mr. Griswold strengthened his position later in the day when he asked the Court to place The Post on the same footing with The Times by forbidding it to publish more of the material until the issue was settled.

The Times, in its petition for certiorari (review) of the Second Circuit's decision, listed eight respects in which it said the Constitution was violated by the delays and restrictions on publication imposed by the Appellate Court.

The 5-to-3 ruling, announced

yesterday, held that The Times could resume publication of the series in its Saturday issue but could not use any material that the Government contended was dangerous to national security.

The court also instructed Judge Gurfein to hold secret hearings as he did before handing down his decision last Saturday, next week, and to determine by Saturday, July 3, which portions of those items cited by the Government posed "such grave and immediate danger to the security of the United States as to warrant their publication being enjoined."

Longer Delay Is Possible

The Times petition for review argued that the delay resulting from that procedure—which would total 18 days on July 3 and might extend far beyond that as a result of further appeals—violated the free press guarantee of the First Amendment.

It also asserted that Congress had never given the Federal courts the power to impose "prior restraint" on newspaper publication and that the lower court's restraining orders violated the First Amendment and the separation-of-powers doctrine by doing so.

Further arguments were that the instruction by the Court of Appeals to Judge Gurfein were unconstitutionally vague and that the Government did not show that it was likely to win after all the evidence was in.

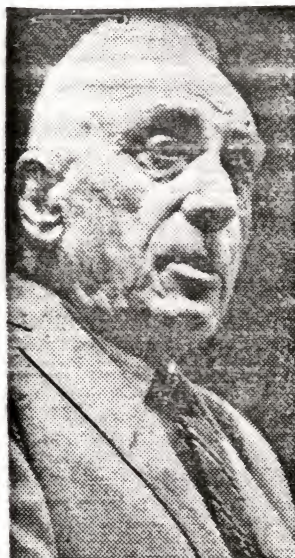
The Times maintained, furthermore, that a trial judge and an Appellate Court in the District of Columbia had held that the same material should not be enjoined and that any restraint of "articles relating to public affairs" might violate the First Amendment.

Both in the petition for review and in the application for an immediate lifting of the restraining order, The Times protested that the order for more hearings was based on assertions of fact made by the Government for the first time before the Court of Appeals. That amounts to offering testimony where cross-examination is impossible. The Times contended.

At issue was a secret "special appendix" given to the Court of Appeals Monday by the Justice Department. It is known to contain a 22-page typed inventory of portions of the 47-volume study that, according to the Government, would damage the nation's security if published.

The Court of Appeals gave the Government until tomorrow to add other items to the list if it wished, and Judge Gurfein was to hear secret testimony from Government officials as to how each item might affect security.

Today Mr. Griswold disclosed in his memorandum asking the Supreme Court not to lift the restrictions on The Times that the list took the form of sworn statements by Government officials. This bore out the assertions by counsel to The Times that the Court of Appeals relied on sworn "testimony" that had not been subjected to cross-examination.



Justice John M. Harlan



The New York Times

Chief Justice Burger

U.S. Appeals Post Case to High Bench

By Sanford J. Ungar
Washington Post Staff Writer

The government, after losing for a second time in the U.S. Court of Appeals here, went to the Supreme Court last night in an effort to prevent The Washington Post from publishing a series of articles based on secret Pentagon documents.

Unless the Supreme Court grants a further restriction against The Post, the govern-

ment argued, "not only will this case become moot but, even more seriously, the damage to the national security and the conduct of our foreign relations that the government is seeking to prevent by this action will irrevocably be placed beyond repair"

"This case and the one involving The New York Times present constitutional issues of great magnitude." Solicitor General Erwin N. Griswold said in his petition to the high court.

He urged that the Supreme Court modify a ruling of the U.S. Court of Appeals here to place it in conformity with the Second U.S. Circuit Court of Appeals in the New York Times case.

While The Times may not publish certain parts of the Pentagon study on the origins of the Vietnam war pending a further lower court hearing in New York, The Post will be free to publish after a restraining order runs out at 6 p.m. today unless the Supreme Court acts.

The government said it was appealing for action by the Supreme Court in the Post case before the 6 p.m. deadline to "provide equal treatment" between the two newspapers.

Its petition reached the Supreme Court last night hours after most of the justices, who already had received The Times' petition, had gone home for the day.

Only a few hours earlier, the appellate court here turned back the government's case against The Post for the second time in two days, saying the Justice Department had already had an "appropriate opportunity" to show how the articles might endanger national security but failed to meet "its heavy burden of proof."

Seven of the nine judges on the U. S. Court of Appeals for the District of Columbia, in an opinion signed only "by the court," said that "the increasing disclosures increase our concern . . . whether effective relief of the kind sought by the government can be provided by the judiciary."

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They noted that since the government originally moved against The Post, The New York Times and The Boston Globe in court, the Los Angeles Times and the Knight newspaper chain had also published reports based on the study.

The stiffly worded opinion, refusing the government's request for another full hearing before all nine appellate judges, said, "We conclude that we are fully appraised of all material considerations and that the matter is now ripe for presentation to the Supreme Court."

Once again, two members of the court, Judges George E. MacKinnon and Malcolm R. Wilkey, dissented from the majority.

They reasserted their position, originally expressed Wednesday, that the Post case should be sent back to U.S. District Court Judge Gerhard A. Gesell for new considerations of whether certain documents in the Pentagon study could, if published, "result in great harm to the nation."

Gesell, after a day-long hearing Monday — much of it held in secret at the government's request — found that such harm would not result and that the government had offered no basis for prior restraint of publication.

Yesterday's action by the appeals court was triggered at 12:50 p.m. when the government filed a petition for a new hearing at the appellate level on the merits of the Post case and a modification of the appellate decision here Wednesday to conform with one handed down in New York.

In the New York case, involving the New York Times series, the Second U.S. Circuit Court of Appeals ordered a lower court judge there to hold another hearing on whether certain documents, to be specified by the government, pose "grave and immediate danger" to national security.

Raising the issue of "equality of treatment" among various newspapers for the first time, the Justice Department said it would be "unfair to The New York Times" if the ruling in the Washington Post case is permitted to stand.

"The New York Times will be under a restraint which is not applicable to The Washington Post," the government argued, unless the appellate decision in Washington is modified to mirror that in New York.

The Justice Department petition also said that a delay would permit clarification of "uncertainty" about what items in the Pentagon study are covered by an agreement between the government and The Post during the original appeals court hearing here on Tuesday.

Attorneys for The Post, in a memorandum filed with the appeals court at mid-afternoon, said, "we strenuously oppose this effort at still further delay. The Constitution simply does not permit a prior restraint based on consideration of 'fairness' to another litigant."

The spread of articles based on the Pentagon study into new newspapers throughout the country, The Post argued, lent "futility" to the government's efforts for an injunction.

"The government, which has been reviewing the documents since 1969, has had almost two weeks to come up with one instance of substantial peril to the national security derived from the 47-volume" study, entitled "History of U.S. Decision-Making Process on Vietnam Policy," The Post said.

"They have failed to do so," The Post continued. "Indeed, in this case, the government offered in the trial court only one document derived from the series which the trial judge (Gesell) himself quickly riddled. The government has been afforded every opportunity to prove its case, and it has failed."

Eight judges on the appeals court met in private session for over two hours to consider the government request. They also consulted Judge Wilkey, who was in Louisville, by telephone.

The appeals court never summoned the lawyers for either side before them yesterday, affirming their earlier decision on the basis of the legal papers that had been submitted.

"Having the greatest respect for the Solicitor General," they said, "we have given his petition careful consideration but conclude that it should be denied."

The seven judges in the majority said that it was not necessary to examine the Pentagon documents themselves to determine whether danger was posed to national security.

The Post, like The New York Times and The Boston Globe, has refused to turn over the documents in its possession for inspection by the courts, on the grounds that confidential sources might be revealed.

Judge Gesell, and in its turn the appeals court, sustained that refusal to submit the documents.

"We are of the view," the appellate court asserted yesterday, "that there has been . . . an opportunity" for what the government called "an appropriate adversary hearing in court."

Referring to the New York Times case, the majority stressed that the full court record in New York was not before it and, thus, its decision must be made on the basis of facts developed in Washington.

"Considerations of comity (the comparative treatment of different cases) may not properly be stretched unduly when what is involved is a prior restraint on the press we do not find constitutionally authorized," the court said.

The government's appeal of the Post case to the Supreme Court, the appellate court here pointed out, "will provide appropriate opportunity for resolution of differences in approach" between it and the appeals court in New York.

With regard to the government's concern about "fairness" between The Post and The New York Times, the seven judges said, "we observe that there may be other newspapers not before either court (in New York or Washington) which would have to be taken into account."

That was a reference to the other newspapers which have published articles based on the Pentagon study since the government's legal action began last week in New York.

Attorneys for The Post, in their own memorandum filed with the appeals court here, suggested that the government had taken "contradictory approaches in its handling of the Post and Times cases."

Asking for reconsideration by the appeals court in the Post case, the government suggested that the posture of the New York Times case was more appropriate for review.

But in opposing a New York Times appeal to the Supreme Court from the Second Circuit decision in New York, the government complained that in that case it "was unable to prepare as complete a submission as it could present with the additional time it had available in the Washington Post case."

Later in the day, however, filing its appeal in the Post case before the Supreme Court, the government suggested that both cases are now ripe for review.

"All of the items whose publication we are seeking to enjoin are classified 'Top Secret-Sensitive,' 'Top Secret' or 'Secret,'" Griswold said in his petition for Supreme Court review of the Post case.

"All of them are property of the United States that was illegally obtained from the government and is held by The Post without authority; the United States has the sole authority to decide whether to declassify the material or to authorize its publication, and has done neither," he said.

The government petition reached the high court in time for its last scheduled Friday conference of the current term. It is scheduled to issue its final decisions of the term on Monday and then recess until October.

The government began its efforts last Friday to stop The Post from publishing articles based on the secret documents. The first of a series had appeared in the newspaper that morning. The article by Chalmers Roberts said that the Eisenhower administration tried in vain to prevent the 1954 Geneva Conference from calling for Vietnam-wide elections, fearing that Ho Chi Minh would win. Later the elections were blocked by South Vietnam President Ngo Dinh Diem.

When the government's request for a restraining order was denied by Judge Gesell, The Post published a second article by Murrey Marder. That article said that the Johnson administration undertook bombing halts not with any hope that they would lead to peace but that they would placate public opinion.

This story was running on the presses when, at the government's request, the U.S. Court of Appeals for the District of Columbia issued a restraining order and sent the case back to Gesell for a full

hearing on the government's contention that the articles would be dangerous to national security.

The appeals court permitted the Marder story to run in all editions, but the order kept The Post from publishing a third article on Sunday.

After a day-long hearing on Monday, Gesell declared that the government had failed to prove its case. The government again appealed and the higher court extended the restraining order for another 24 hours.

The appeals court, with all of its nine judges sitting, held a three-hour hearing Tuesday and again extended the ban against publication while it weighed the government's case.

In asking for the original temporary restraining order, the government said that The Post would suffer no injury if it were stopped from publishing pending the government's request for a preliminary injunction.

The order was sought for alleged violation of a section of

federal law making it illegal to communicate any information which "could be used to the injury of the United States." The penalty for violation is 10 years in prison and a \$10,000 fine.

The defendants cited by the Justice Department suit are The Washington Post Co.; Katharine Graham, publisher of The Post; Paul R. Ignatius, company president; Benjamin Bradlee, executive editor; Philip L. Geyelin, editor of the editorial page; Eugene C. Patterson, managing editor; James J. Daly, vice president and general manager; Gerald W. Siegel, vice president and legal counsel; Robert P. Thome, treasurer; Joseph Lynch, vice president for advertising; Jack F. Patterson, circulation director; Julian J. Eberle, production operations director; Frederick S. Beebe, chairman of the board; John W. Sweeterman, vice chairman of the board, and Chalmers M. Roberts, staff writer and author of the first article of the series.

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The Secrecy Tangle

By JAMES RESTON

WASHINGTON, June 24—The partial disclosure of the Pentagon Papers has already produced two important developments. It has forced the Administration to turn over all the documents in the McNamara study to Congress for analysis, and it has started a powerful movement to reform the present system of distributing and classifying official information.

Even before the invention of the Xerox copying machine, the Government regulations for dealing with official documents was disorganized and capricious. Since that invention, which enables many more officials to make and retain copies of classified papers, the "system," if that's the word for it, has become chaotic.

For example, William G. Florence, a recently retired Pentagon security expert, has just estimated for Congress that the Government now has "at least twenty million classified documents, including reproduced copies," on file. These include, he said, published commercial information and even newspaper clippings, which never should have been classified. Disclosure of information in at least 99½ per cent of these classified documents, he said, "could not be prejudicial to the defense interests of the United States."

There are rules under Executive Order 10501 on who can classify official information and how it should be classified, but the higher up the executive ladder you go, the greater the confusion over who can retain copies of classified material.

Some officials, like former Secretary of State Acheson, were so scrupulous about abiding by the rules that they even lost many valuable private letters which contained official information. Similarly, some officials who have been criticized for their contributions

to the Pentagon Papers—McGeorge Bundy, for example—find themselves in the awkward position of not having copies of their own memos which are now the object of public criticism.

Examples of the confusion abound. Former Secretary of Defense McNamara, who ordered the Pentagon study in the first place, was advised that he did not have authority to declassify the Pentagon Papers, but former Secretary of State John Foster Dulles personally declassified the top secret Yalta papers and gave them to this reporter.

It is not at all clear what papers officials are permitted to take away with them when they leave office, what is regarded as a private paper and what a public paper. Ever since Herbert Hoover, Presidents have tended to take whatever papers they like and to keep them secret, even when they are the only record available.

Another problem is the selective release of historical documents to scholars noted for their professional skill and sometimes for their sympathetic natures.

During the first Eisenhower Administration, Sherman Adams asked Robert Donovan, then of The New York Herald Tribune and now of The Los Angeles Times, to write a book on the first Eisenhower term. He agreed to do so on the conditions that he should have access to the relevant secret documents and that his manuscript not be edited. These conditions were met, he was granted a "Q clearance" to see the documents not available to others, and wrote a very fine book.

There is, then, a difference between

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the public reaction to the publication of "secret documents" and the reaction of many men and women here, who know how unpredictable, personal and disorganized the classifying and declassifying procedures are.

Documents are released sometimes for political reasons, sometimes to promote or block policies, sometimes to keep the whole record from being distorted by selective documents taken out of context.

This is not an everyday occurrence, but it is common, always condemned by those who want a better system both for classifying and declassifying confidential information or by those who get hurt by the "leaks," but usually practiced by those who stand to gain by disclosures.

So while there are undoubtedly distortions and even misleading interpretations coming out of the Pentagon Papers, even many officials here who decry so massive a disclosure concede that something good may come out of the controversy.

At least the Senators and Congressmen elected by the people are now to have the information available to many officials and newspapermen who were not elected by the people, and if a well-balanced committee or committees of the Congress now take time to analyze the material, some of the lessons of the past will eventually come out, which was what Robert McNamara had in mind in the first place.

Beyond that, the organized confusion of the rubber-stamp brigade may now be reformed by new Congressional or Executive regulation. It will never be quite brought under orderly control, not with a photocopying machine in every bureaucratic closet; but it will be changed and it cannot possibly be changed without being improved.

U.S. Petition to Supreme Court in New York Times Case

Following is the text of a government petition to the Supreme Court in connection with New York Times publication of the secret Pentagon documents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Memorandum for the United States in Opposition to Application for Vacatur of Stay Ordered by the Court of Appeals and Stay of Mandate of That Court

Petitioner seeks to stay the portion of the judgment

of the Court of Appeals for the Second Circuit that enjoined The New York Times from disclosing or publishing specified items contained in a Department of Defense study of the United States' involvement in Vietnam, pending a further in camera hearing by the district court to determine whether disclosure of those items "pose such grave and immediate danger to the security of the United States as to warrant their publication being enjoined." The court directed that the district court make that determination by July 3, 1971. Ex-

cept with respect to those items the court vacated, effective June 25, 1971, its prior stay enjoining The New York Times from publishing other material contained in the Defense Department's study.

The New York Times has filed a petition for a writ of certiorari to review the portion of the judgment enjoining publication of the portions of the material with respect to which the further in camera proceeding was directed, and also seeks an immediate vacation of the stay relating to those docu-

ments. The effect of the Times' application, if granted, would be to moot any question with respect to the issue on which the Times seeks certiorari, and in effect thereby to decide the very issue that the Times urges this court to review.

The request for immediate dissolution of that portion of the stay should be denied. Whatever may be the limits of judicial authority to enjoin publication by a newspaper of classified material relating to the conduct of foreign relations and national defense, the courts certainly can prohibit publication of material that poses a "grave and immediate danger to the security of the United States." In *Near v. Minnesota*, 283

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U.S. 697, 715-716, this court recognized that "under the First Amendment 'the protection even as to previous restraint is not absolutely unlimited. . . . No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops.'" These examples were merely illustrative and obviously there are other items of information so vital to the security of the United States that their publication may be enjoined. The exception to the prohibition upon prior restraint recognized in *Near v. Minnesota* surely covers material whose publication would pose a "grave and immediate danger to the security of the United States."

The challenged provision of the judgment of the court of appeals merely maintains the status quo until the district court has had the opportunity to determine whether certain portions of the Defense Department study come within this category. The court of appeals has been highly selective in designating the items to which this prohibition applies, as to the vast bulk of

the study, under the court of appeals' order, the Times is free to resume publication of the series on June 26, 1971.

In relation to the public interest — and that is the primary touch-stone for determining whether the stay ordered by the court of appeals should be immediately dissolved — we submit that there can be no serious question that the court of appeals did not abuse its discretion in enjoining, for the brief period of one week during which the district court will conduct further proceedings, the publication of a small number of documents which, on the basis of affidavits submitted by high government officials, appeared to the court of appeals to pose a "grave and immediate danger to the security of the United States."

The fact, upon which the New York Times heavily relies, that the information indicating the serious impact disclosure of these documents would have upon the security of the United States were not submitted initially to the district court, but was first made available in the subsequent hearing involving the injunction. In cases dealing with such vital matters of national security, the outcome cannot depend upon the legal nicety that, due to the short deadline under which the government was required to operate in presenting its proof to the district court in the present case, it was unable to prepare as complete a submission as it could present with the additional time it had available in the *Washington Post* case. When this

additional information indicating the serious threat to national security that disclosure of certain of these documents would cause was presented to the court of appeals, that court acted entirely properly in remanding the case to the district court to reconsider on the basis of this additional information and, during the brief time

that such reconsideration will take, continuing the injunction against publication of the documents.

Petitioner points out that following the decision of the court of appeals in this case, the Court of Appeals for the District of Columbia Circuit affirmed the judgement of the district court in that case without limiting the scope of the injunction. It contends that since *The Washington Post* will therefore be free of the restraint to which the Times is now subject, the Times will suffer irreparable harm because "news no longer current is stale and of severely diminished intrinsic value" (Application p. 7). The United States today is filing in the Court of Appeals for the District of Columbia Circuit a motion for reconsideration in which it is asking that court to modify its judgment to make it consonant with the judgment of the Court of Appeals for the Second Circuit in the *New York Times* case. In any event, it is difficult to see how the New York Times would be irreparably injured from one week's delay in making public material contained in a limited number of documents relating to events which took place at least three years ago and, in many instances, far longer than that. The material contained in these documents will be just as "current" a week from now as it is today; the only truly current aspect of this news story is the developing course of judicial decision. Moreover, if

is far from clear that any of the material that the Times proposes to disclose in its further articles reflects the small amount of material whose publication has been temporarily enjoined; the narrow stay granted by the court of appeals would, at most, seemingly only require the Times to delete a small portion of those articles.

The application to vacate the stay should be denied.

U.S. Declines to Curb L.A. Times and Knight

A-1

By Stuart Auerbach
Washington Post Staff Writer

The Justice Department declined yesterday to move against the latest newspapers to quote the secret Pentagon study of the Vietnam war.

A spokesman said the department plans to take "no action" against The Los Angeles Times or the Knight newspaper chain because of articles they published yesterday based on the secret Pentagon study.

Attorney General John N. Mitchell, questioned after testifying before a Senate Appropriations subcommittee, said the stories in The Los Angeles Times and the Knight chain of 11 newspapers either were not based on classified documents or were written so as not to reveal any secret information.

Both The Times and the Knight chain said their articles were based on the same secret report that the government is trying to keep The New York Times and The Washington Post from writing about.

William Thomas, executive editor of The Los Angeles Times, told U.S. Attorney Robert Meyer that The Times has "no present intentions to publish anything further" from the secret Pentagon study.

But, Thomas continued, "I couldn't rule out the possibility that another story may eventuate."

The Chicago Sun-Times and The Baltimore Sun have also run stories based on the secret Pentagon papers. The Justice Department has made no move to stop them.

In its Friday edition, The Sun-Times for the third straight day published stories it said came from Pentagon reports and other top secret documents. On Wednesday, after the first Sun-Times stories appeared, the Justice Department said they were based on documents that had been declassified by President Johnson.

The Sun-Times said Friday that President Eisenhower set the stage for the present war in Vietnam by establishing in 1958 a national policy to eliminate Communist control of North Vietnam.

His aim, the Chicago paper said on the basis of the secret documents, was to unite North and South Vietnam under a government that favored America.

Meanwhile, the FBI yesterday contacted attorneys for Daniel Ellsberg, 40, a senior research associate at Massachusetts Institute of Technology, who is the man most often mentioned as the person who may have leaked the Pentagon study to the newspapers.

Ellsberg, a former Defense Department aide and Vietnam specialist at the Rand Corp. "think tank" in Santa Monica, Calif., has not been seen in public since June 16 although he appeared on nationwide television Wednesday night.

The attorneys said Wednesday that Ellsberg would be willing to talk to any government agency about the leaked documents.

Yesterday, however, the attorneys—Leonard B. Boudin and Charles R. Nesson—set six conditions for producing Ellsberg.

These included FBI guarantees that the interview would

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be neither in an FBI nor an MIT office; that the interview would be private; that there would be no federal warrant or subpoena at the time of the interview; that there would be no intention of arresting Ellsberg during the interview, and that the FBI would give the attorneys time to produce Ellsberg if a warrant or a subpoena were subsequently issued for him.

The last condition apparently worried the FBI the most.

They feared that Ellsberg might go underground if he knew he was about to be arrested and embarrass federal authorities by his ability to avoid arrest.

"They think Daniel Ellsberg might turn into a Daniel Berrigan," (the antiwar priest who avoided arrest for months before the FBI found him), a Justice official said.

Post Plea In Court Of Appeals

Following is the text of a memorandum filed by The Washington Post with the U.S. Court of Appeals here in connection with publication of the secret Pentagon documents.

Appellees' Memorandum in Opposition to the Govern- ment's Petition for Rehear- ing and Modification

At approximately 10:30 a.m. today, the attorneys for The Washington Post were advised by the solicitor general that the government was moving in this court for rehearing and modification of yesterday's decision and order; and would seek oral argument thereon. We were advised that the purpose of this move was to put the Post case on the same footing as the New York Times case, because the government was concerned that the situation as it now stands was unfair to The New York Times.

We strenuously oppose this effort at still further delay. The Constitution simply does not permit a prior restraint based on consideration of "fairness" to another litigant.

The government, which has been reviewing the documents since 1969, has had almost two weeks to come up with one instance of substantial peril to the national security derived from the 47-volume history. They have failed to do so. Indeed, in this case, the government offered in the trial court only one document derived from the series which the trial judge himself quickly riddled. (Tr. 132) The government has been afforded every opportunity to prove its case, and it has failed.

The posture of this case is quite different from the New York Times case. There has been here a full hearing on a full record. We submit that the government's procedural problems in New York should not be permitted to delay this case here.*

*Since dictating the foregoing, we have been advised by telephone that the United States has filed a document in the Supreme Court of the United States opposing The New York Times' Application For Vacatur Of Stay Ordered By The Court Of Appeals And Stay Of Mandate Of That Court. In which the government says at page 3:

"In cases dealing with such vital matters of national security, the outcome cannot depend upon the legal nicety that, due to the short deadline which the government was required to operate in presenting its proof to the district court in the present case, it was unable to prepare a complete submission as it could present with the additional time it had available in the Washington Post case.

Also, we note that this court's concern for the futility of injunctive relief has been further confirmed by the fact that since last evening the Los Angeles Times has published another full story from the subject papers, as have eight of the newspapers in the Knight chain, including the Philadelphia Inquirer, Detroit Free Press and Miami Herald, and that a second story appeared today in the Chicago Sun-Times based on hitherto unpublished material.

Finally, we urge that considerations of judicial efficiency — as well as First Amendment rights — demand summary denial of this motion. This litigation must come to an end. There is neither precedent nor reason in asking a court which has once heard a matter en banc to rehear it again particularly where it is apparent here, from the dissenting opinions, that the court specifically considered and rejected the very relief which the government indicates it will now seek.

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Government Petition to Court of Appeals Here

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Following is the text of a government petition filed with the U.S. Court of Appeals here seeking a rehearing and modification of a decision governing Washington Post publication of the secret Pentagon documents.

Petition for Rehearing And Modification Of Decision

1. While this case was pending before this court, a closely related case involving The New York Times was pending before the United States Court of Appeals for the Second Circuit. That court rendered a decision in that case shortly after five o'clock on the afternoon of June 23, 1971. A copy of the decision of that court is attached as an appendix to this petition.

2. Up until this time, neither the District Court in this case, nor this court, has examined any of the documents involved. On a matter involving the possibility of grave and immediate danger to the security of the United States, there should be an opportunity for an appropriate adversary hearing in court. The determination of such an issue should not be made independently of judicial review, even by the press.

3. Under the decision of the United States Court of Appeals for the Second Circuit, in the case involving The New York Times, there will be such a hearing with respect "to items specified in the Special Appendix filed with this Court (the Second Circuit) on June 21, 1971, or any of such additional items as may be specified by the plaintiff with particularity on or before June 25, 1971," for the purpose of determining whether any of these items "pose such grave and immediate danger to the security of the United States as to warrant their publication being enjoined."

4. Under the decision of this Court, The Washington Post is free to publish any items it has after 6 p.m. on June 25, 1971, except certain items which its counsel stated in Court on June 22, 1971, would not be published. Judging from items appearing in The Washington Post for June 24, 1971, after the decision of this court, there appears to be uncertainty as to just what items are covered by the undertaking of counsel.

5. Both The Washington Post and The New York Times for June 24, 1971, state that The New York Times is going to appeal the decision of the Court of Appeals for the Second Circuit, presumably by application for a stay, and petition for certiorari. The United States plans to resist such application for stay, and to urge upon the Supreme Court that it not interfere with the decision of the Second Circuit, which provides for an appropriate adversary judicial hearing in the District Court on the question whether specified documents pose a grave and

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immediate danger to the security of the United States to warrant an injunction.

6. Under the decision of this court, as it now stands, The Washington Post will be free to publish all of these items, except the uncertain number of items which its counsel has stated will not be published. Thus, if the decision of the Second Circuit stands:

(a) The New York Times will be under a restraint which is not applicable to the Washington Post;

(b) This will be unfair to The New York Times;

(c) The opportunity provided by the decision of the Second Circuit for an adversary judicial determination of the question whether specified documents pose such grave and immediate danger to the security of the United States as to warrant an injunction will be frustrated—for, any such proceedings in the District Court in New York will be futile if the items in question have already been

published by The Washington Post.

7. If the decision and order of this court rendered June 23, 1971, are modified so as to make them consonant with the decision of the Court of Appeals for the Second Circuit (a) the remedy provided by the Second Circuit's decision will be preserved; (b) uncertainty will be eliminated as to the identity of the specific documents which counsel for the Washington Post has undertaken will not be published;

(c) equality of treatment will be provided between The Washington Post and the New York Times; and (d) there will be an opportunity for an appropriate judicial hearing with respect to specified documents as to whether they pose such grave and immediate danger to the security of the United States as to warrant an injunction.

For these reasons, the United States prays that this petition for rehearing be granted, and that the de-

cision and order of this Court rendered in this case on June 23, 1971, be modified so that it will read in the same terms as the decision of the Court of Appeals for the Second Circuit, likewise rendered on June 23, 1971, in the case of *United States v. New York Times Co.*, Docket No. 71-1617. Any such modification should, of course, provide that it will be subject to further modification in the event that the Court of Appeals for the Second Circuit, or the Su-

preme Court, modifies the decision rendered by the Second Circuit in *The New York Times* case on June 23, 1971, and that the restraint provided here will be the same as that to which The New York Times is subject, thus preserving the relief which has been provided by the Second Circuit, but no more.

We request an opportunity for oral presentation with respect to this petition, at the earliest convenience of the court.

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CARL T. ROWAN A-13

It's Hardly Just a Question of National Security

WICHITA, Kan. — The seething controversy over those secret Pentagon papers could go on for a year, as no doubt it will, without Americans understanding some critical points. For example:

• Why, when it's the Democrats who are accused of lying to the public, and when Republican National Chairman Robert Dole is trying to make political hay, would the Nixon administration leap into ill-conceived court actions to suppress information so devastating to Lyndon B. Johnson and his former associates?

• Why would Nixon sic the FBI on Daniel Ellsberg, or whoever leaked the Pentagon papers to the New York Times? After all, this was a leak of "conscience" quite similar to former State Department officer Otto Otepka's "Conscience" leaks of classified data to certain conservative members of Congress.

Nixon rewarded Otepka with a plush no-work job on the Subversive Activities Control Board, so how can the President think of punishing the conscience leaker of the Vietnam papers?

• Is it really just a question of national security?

Well, let's look at the big beans spilled by these controversial newspaper reports.

1. The United States was pushing a variety of clandestine commando attacks on North Vietnam for six months

~~before the Gulf of Tonkin episode~~ under a top secret "Plan 34-A."

2. The Tonkin incident was actually provoked by two damaging clandestine assaults on North Vietnam.

In reporting this, was the press baring two great secrets to the enemy? No, the North Vietnamese knew all along what the U.S. and South Vietnam were doing to them. It was primarily the American public (and some U.S. allies in Asia and Europe) who had been kept in the dark until the Times enlightened them.

There are other revelations, of course. Adm. ~~Harry Felt~~ won't like those headlines saying he wanted to use nuclear weapons. Gen. Maxwell Taylor will cry treason because his hawkish prose is printed verbatim. Politicians in Australia or other countries will cringe at the thought that their secret major roles will be revealed.

Yes, very embarrassing! But hardly a national security crisis.

So how does "national security" become paramount when it's mostly Americans being kept in blinders on the big issues?

Why would the government plod ahead doggedly, beating its head against the 1st Amendment, then suddenly dart to a devious declassification gambit in which the papers in question will be so

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"sanitized" that the versions made public will add up to a lie?

It is a good guess that the Nixon administration knows there is a lot of embarrassment potential for Republicans in these documents, and they wanted to stop the revelations while the GOP was ahead.

But could it be that this government exercise is a brash attempt to clip the wings of the American press? The speeches of Vice President Agnew, Atty. Gen. John Mitchell, Dole and other administration leaders leave little doubt that the Nixon team regards the American press as too free. Especially the "Eastern liberal establishment press" as represented by the Times, the Washington Post, the Boston Globe.

Why were the public and the courts not more taken in by the cries of national security? Is it that the public searched the history books and found nary a tyranny begun by a free press, whereas history is replete with instances of dictators and would-be tyrants beginning their eras of cruel

power by silencing a free press — or taking it over.

That one lesson of history lies compellingly in every phrase of Judge Murray I. Gurfein's eloquent ruling that, in the Pentagon papers dispute, "the security of the nation is not at the ramparts alone. Security also lies in the value of free institutions. A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."

Why, some of us ask, doesn't this kind of wisdom seep into the Justice Department?

WASHINGTON CLOSE-UP

The Supposed Legal Debate

By LYLE DENNISTON

Troopships bound secretly for war zones would not have passed in the night with less notice than lawyers for the government and the press gave each other in recent days.

Much has seemed unreal about the Justice Department attempt to stop further newspaper stories on the "Vietnam archives" and the press response to that, but nothing was as plainly unreal as the supposed legal debate between the two sides in court.

Both sides were in the same courtrooms, of course, and there were exchanges. But neither side took part in a true argument. They offered their points on widely separated levels, never quite catching what each other was saying.

The points were more fully developed in New York, where the Times was under challenge, than in Washington, where the Post was at bay. The New York clash came first, and more time was available for it.

Yet it was even more conspicuous there that the two sides were being mutually inattentive, passing by each other as if in silence.

The government lawyers' outward argument was about the alleged threat to the nation's defenses and diplomacy. The Times lawyers' surface argument was about the right of the public to know. But neither insisted very urgently upon having its way with those pleas.

The government put on witnesses who were, in general, far from well-prepared, and contented itself with their generalized presumptions. And the press kept accepting, time after time, the postponement of its publishing right.

It was as if there was less than full commitment in court

to the basic interests supposedly in confrontation there. That probably was near to the fact, since the lawyers for each, not the policymakers, were making the decisions that counted day to day.

The fine points had caught the lawyers' fancy, and it was those underlying points that failed rather completely to bring out what was really at stake for each side. For a contest between great causes that could not be reconciled, this one often had a remarkable grayness to it.

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On the government's side, the lawyers chose as their key point the argument that the newspapers simply took something that did not belong to them, and thus had no right to keep it or make use of it.

Indeed, as key Justice Department aides spelled out this point, it was no more than an argument about property rights and theft. This was what lay behind the government lawyers' repeated comments, in virtually every court hearing, that the documents in question had been "stolen or embezzled."

As a general matter in property law, anyone who gets possession of a stolen item has no right to it even if he did not steal it himself and even if he got it by entirely innocent means. An ancient theory of common law permits the owner to go into court and swiftly get an order forcing return of the property to him.

The government wanted the courts to treat the documents as its property, not that of the general reading public; the fact that the Vietnam archives were marked "top secret" was said to enhance the government's sole right to them.

Established as binding law, that theory would surround secret government papers with a

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brand-new layer of protection from news disclosure. That protection might have much to do or nothing to do with the effect of disclosure on the nation's defenses or diplomacy.

So it was that the government pleaded its cause.

On the Times' side (and, to a somewhat lesser extent, on the Post's side), the lawyers chose as their key point the argument that this was essentially a case on the facts.

As a trial strategy, they conceded that the government might go to court to keep the newspapers from making public some kinds of secrets, if disclosure would threaten "grave danger." From that, they went on to argue that the documents now involved were not in that category and were, in fact, only historical.

All the while, the newspaper lawyers were making it clear they would accept the judgment of a court about that, and would abstain from publishing the documents until the judgment was in. They conceded to a federal judge a substantial measure of discretion to determine that a news account on sensitive policy ought to be barred.

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This was a classic use of the lawyers' theory that, if it is possible to avoid a constitutional decision, it is the part of wisdom to do so.

So it was that the press pleaded its cause.

Both sides, therefore, took a calculated risk that the judges would rule their way on the fine points without ruling against them on the basic interest at stake.

The constitutional confrontation, therefore, turned out to be muted, gentlemanly and legalistic. For clarity and certainty, it might have been better if the fight had been clamorous.



Department of Justice

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Mr. Sullivan ☒
Mr. Mohr _____
Mr. Bishop _____
Mr. Brennan CD ☒
Mr. Callahan _____
Mr. Casper _____
Mr. Conrad _____
Mr. DeLoach _____
Mr. Felt _____
Mr. Gale _____
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Miss Holmes _____
Miss Gandy _____

FOR IMMEDIATE RELEASE
FRIDAY, JUNE 25, 1971

Attorney General John N. Mitchell announced today that a warrant has been issued for the arrest of Daniel Ellsberg on charges that he had unauthorized possession of top secret government documents and failed to return them.

The material was described as separately bound sets of 47 and 18 volumes respectively of xerox copies of a study of "United States Vietnam Relations for the period 1945-1967."

Information contained in the volumes, the complaint charged, was described as "descriptive text, cablegrams, memoranda, decision papers and other internal Executive Branch documents, all but one of which was classified "Top Secret," the remaining document being classified "Confidential."

The complaint and warrant was signed by U. S. Magistrate Venetta S. Tassopulos in Los Angeles. Maximum penalty upon conviction is a \$10,000 fine and 10 years in prison.

Filed with the complaint were four affidavits, including one from Ellsberg's former wife, Carol. Two statements were signed by Rand Corporation security and classified documents officers and another by

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an FBI agent.

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Mrs. Ellsberg said in her statement that in October, 1969, she learned that her former husband was engaged in making xerox copies of a large number of documents, some of which bore the classification "Top Secret."

"After the xeroxing, he cut the classification off," she said.

Mrs. Ellsberg stated that she spoke to her former husband about this matter, telling him she was concerned because, in her opinion, "this was a criminal act and he could go to jail for it."

She said he replied he had done nothing illegal and that there was no Official Secrets Act in this country.

She further stated that her former husband told her that he "was very concerned about the war in Vietnam and that he was going to be actively working against it and that there were things that had not been disclosed which should be known. He then said he would only give it to authorized people like Senators Fulbright and Goodell."

The two Rand employees attested to the fact that Ellsberg had access to all 47 volumes of the set and was given custody of 27 of the 47 volumes at various times between October 23, 1969 and April 7, 1970.

The 27 volumes were returned to Jan Butler, the Top Secret Control Officer at Rand, on May 20, 1970. At no time was Ellsberg given permission to take any of the documents outside the Rand Corporation's Santa Monica facility, Butler said.

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Courtland Jones, an FBI agent assigned to the Washington D.C. Field office, said in his affidavit that he interviewed Congressman Paul N. McCloskey, Jr. last Tuesday, June 22, during which time the Congressman stated that he had had discussions with Ellsberg about the Vietnam war.

The agent also said that Rep. McCloskey said he and Ellsberg traveled by airplane together from Washington to San Francisco and from Los Angeles to Washington.

He also said that Ellsberg had given him (McCloskey) a number of documents which purported to relate to decisions made in the Executive Branch of the U.S. Government between 1961 and 1965.

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DAVID LAWRENCE

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Importance of Keeping Confidences

Great Britain, whose government is one of the closest friends the United States has today, finds that the publication of secret papers in the Pentagon study presents a problem which is giving it great concern.

The British Foreign Office has instructed its ambassador in Washington to make representations "to express to the United States government the British government's concern at the threat to the confidentiality of diplomatic exchanges in the light of the publication" of the papers.

The public statement went on to say that British officials "are concerned at the status of exchanges of an intergovernmental nature."

Just a few days ago, the Australian government showed a similar reaction and wondered whether in future relations with the United States it could be assured that messages and other confidential expressions would not be made public.

In both Australia and Great Britain there are discussions about items which were "leaked" from classified documents. In America there have been demands that all the documents in the study be "declassified" and made available for publication. This has begun to worry foreign governments in countries besides Great Britain and Australia.

The conduct of diplomatic relations is a delicate business. Messages are often transmitted that relate to a third country, and the United States may be asked to intercede or to be helpful in avoiding or settling controversies or disputes.

Naturally, governments do

not like to let it be known publicly what moves they may be suggesting with respect to other governments. They frequently obtain and provide information which is helpful to the United States, but they would not themselves wish to become involved in whatever action is subsequently taken.

If there is a possibility that messages are to become public property at any moment, foreign governments will be reluctant to put anything on paper or to let an ambassador write any message on ticklish subjects which could be placed in the records. This could make the road of diplomacy difficult to travel.

It seems strange that some members of Congress do not comprehend the importance of secrecy with respect to messages passing to and from the State Department and its representatives abroad or communications with foreign governments.

It's difficult to understand, too, why there is a disregard for the feelings of foreign governments when it is urged that messages be made public irrespective of the fact that they were originally classified for a legitimate purpose.

The State Department's problems will increase substantially unless there is a firm commitment hereafter that at no time will the texts of messages exchanged with foreign governments ever be published either by researchers or by members of Congress who make special studies.

Certainly it should be possible to discuss foreign policy without involving confidential relationships with other gov-

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ernments, especially with those countries with which it is essential that the United States maintain good faith and mutual trust.

After the passage of time, there is often a tendency to assume that what happened several years ago is no longer of consequence. But confidential exchanges with foreign governments should remain secret and should not be revealed without the permission of the governments which may be involved.

This is the only fair way to deal with the "declassification" of such documents and to ensure that America will not lose her friends through the sudden appearance of confidential messages in the press. It is to be hoped that the newspapers themselves hereafter will consult with the government here before the texts of any messages are published. They could easily be paraphrased and still give certain phases of the news.

It would not be surprising, however, if other governments developed a reluctance to do business with the United States by the exchange of messages. In the case of important matters that could be hurtful if disclosed, probably by mutual agreement no record at all will be kept in the files of the American government.

Foreign ambassadors may decide to conduct their negotiations in person with State Department officials and avoid putting anything in writing. Unfortunately, governments throughout the world will be losing confidence in the American government's ability to keep something "top secret."

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Witness Says Ellsberg Used Her Xerox

By Leroy F. Aarons
 Washington Post Staff Writer

LOS ANGELES, June 24 — A tanned, diminutive advertising woman testified before a federal grand jury today that Daniel Ellsberg used her Xerox machine to run off some 3,000 pages of documents in late 1969. Lynda R. Sinay, 28, said Ellsberg, a personal friend, spent a week to two weeks, on and off, copying the documents. But she said that she did not know what the documents contained or where they came from.

Mrs. Sinay's testimony, which she gave when granted immunity after first taking the Fifth Amendment, was described by her attorney, Luke McKissack. The grand jury was impaneled early this week to investigate the leak of the 7,000-page, 47-volume secret Pentagon study of the Vietnam war to the press.

Paul Vincent, a U.S. attorney with the Justice Department, arrived in Los Angeles Monday to take charge of the case. Ellsberg, a former foreign policy adviser to the government and a consultant at the Rand Corp. in nearby Santa Monica, has been most frequently cited as the possible source of the documents.

McKissack said the government seemed convinced that the documents run off in Mrs. Sinay's office were the Pentagon papers. He said, "There was nothing she said that they [the investigators] didn't know."

McKissack said Mrs. Sinay testified that Ellsberg paid her about \$150 at four to five

cents a copy for use of the machine.

He said Mrs. Sinay said another person was present assisting Ellsberg, but that she could not identify him.

"The whole thing didn't stand out in her mind," said McKissack. "It didn't mean anything to her at the time."

Mrs. Sinay answered "no" to a series of questions seeking to determine whether Ellsberg had ever announced his intention to steal documents or reveal government secrets. The attorney said the government seemed to want

Mrs. Sinay to "really damn Ellsberg," but that she had insisted he was "a brilliant man and a dear friend."

Mrs. Sinay, a divorcee, said she met Ellsberg two years ago through Anthony J. Russo, a close friend. Russo, an engineer who worked at Rand from 1964 to 1969, appeared before the grand jury yesterday, but refused to testify.

A contempt hearing for Russo, who is now assistant chief of research for the Los Angeles County Police Department, will take place in federal court Friday.

Meanwhile, The Los Angeles Times reported today that Mrs. Sinay had rented a Xerox 914 copier for a Melrose Avenue office, near Hollywood, between December 1969 and May 1970. The rental was listed. The Times said, in a bankruptcy petition filed by Mrs. Sinay last year when she was doing business as Lynda Sinay Advertising.

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The Times said Mrs. Sinay listed debts totaling \$93,171.79 and assets of \$4,181.96. One of the debts was \$691.96 to Xerox for the rental. McKissack acknowledged the rental but said it was for routine business use not for any specific purpose.

Ellsberg was at the Rand Corp. from 1967 until last fall, except for a brief period when he served as an adviser to the Nixon administration. Government officials in Washington have already suggested that Rand was the possible source of the leaked documents. Last week the Pentagon reclaimed the two copies of the report in Rand's possession, and said they could possibly be the basis of criminal action. One of the sets was at Santa Monica and the other at Rand's Washington, D.C., office. Rand said it was storing the volumes for individuals, but refused to name them.

Rand spokesmen have refused to comment all week.

Top executives of the "think tank," most of whose work is highly classified research for the Defense Department, reportedly are concerned that its security clearance might be lifted—which would virtually put it out of business.

Relations between Rand and Defense have become strained over the last several years, since Rand researchers have been increasingly critical of government policy in their reports. Two years ago a group of Rand researchers publicly announced their opposition to the Vietnam war.

Mrs. Sinay, petite, wearing a cotton pantsuit and cork-heeled sandals, testified for more than an hour today and for about 15 minutes on Wednesday afternoon. Emerging from the grand jury room into the Federal Building's bare corridor at noon today, Mrs. Sinay said, "I met him (Ellsberg) about two years ago and last saw him about a year ago." Contacted by telephone later, Mrs. Sinay would not discuss her testimony.

"I lead a very quiet life," she said. "I have two beautiful children. And I just want to be left alone."



Associated Press

Lynda Sinay, a friend of Daniel Ellsberg, leaves Los Angeles federal building after testifying before grand jury investigating leak of Pentagon documents.

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Ellsberg Friend Tells of Xeroxs

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A witness testified before a federal grand jury in Los Angeles yesterday that Daniel Ellsberg used her Xerox machine to run off about 3,000 pages of documents in late 1969.

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ADD 1 VIET REPORTS, WASHINGTON (UPI-9)

MCCLOSKEY, ALSO SCHEDULED AS A WITNESS, SAID IN ADVANCE OF THE HEARING THAT HE WAS WILLING TO TURN OVER TO THE COMMITTEE THE MATERIAL HE SAID HE RECEIVED FROM ELLSBERG ON SOME OF THE INNER-GOVERNMENT PLANNING PRIOR TO FULL U.S. INVOLVEMENT IN VIETNAM.

MCCLOSKEY WAS INTERVIEWED ON NBC-TV'S TODAY SHOW.

HE SAID HE "CANNOT HONESTLY SAY" FOR SURE THAT THE PAPERS IN HIS POSSESSION WERE COPIES OF PARTS OF THE SECRET PENTAGON SUMMARY OF VIETNAM PLANNING WHICH WERE THE SUBJECT OF SEVERAL STORIES IN NEWSPAPERS.

MCCLOSKEY SAID THAT THE PAPERS HE GOT FROM ELLSBERG AND THE NEWSPAPER ACCOUNTS SHOWED THAT THE "REAL LESSON" TO BE LEARNED FROM THE DOCUMENTS WAS THAT THE GOVERNMENT PRACTICED "DELIBERATE DECEPTION" ON THE PUBLIC AND CONGRESS WHILE GETTING THE UNITED STATES MORE DEEPLY INVOLVED IN VIETNAM.

MCCLOSKEY SAID THE PUBLIC HAS AS MUCH RIGHT AS FORMER PRESIDENT LYNDON B. JOHNSON TO ACCESS TO THE PENTAGON PAPERS, SAYING JOHNSON IS NOW "NO DIFFERENT FROM ANY ORDINARY CITIZEN."

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UPI-79

(VIET REPORTS)

BERKELEY, CALIF.--PUBLICATION OF THE "PENTAGON PAPERS" HAS RAISED SERIOUS QUESTIONS OF PRESS RESPONSIBILITY AND REGARD FOR THE LAW, FAMED NUCLEAR SCIENTIST DR. EDWARD TELLER SAID TODAY -- BUT IT ALSO MAY DEMONSTRATE "THE ADVANTAGES OF GREATER GOVERNMENT OPENNESS."

TELLER, ONE OF THE DEVELOPERS OF THE HYDROGEN BOMB AND A LONG-TIME OPPONENT OF MILITARY CLASSIFICATION OF SCIENTIFIC DATA, SAID IN AN INTERVIEW THE U.S. HAS BEEN MOVING TOWARD GREATER OPENNESS IN THE LAST FEW YEARS.

THIS KIND OF ATMOSPHERE, HE SAID, PUTS A RESPONSIBILITY ON THE PRESS NOT TO "UNILATERALLY BREACH" THE SECRECY WHICH STILL EXISTS, OR TO PRESENT INFORMATION IN A WAY WHICH "OVERLOADS IT WITH SENSATION."

"IT SEEMS THAT THIS BELIEF IN THE DISADVANTAGE OF SECRECY IS BORNE OUT BY RECENT OCCURRENCES."

ST. LOUIS--HERBERT G. KLEIN, WHITE HOUSE COMMUNICATIONS DIRECTOR, LAST NIGHT DEFENDED ATTORNEY GENERAL JOHN N. MITCHELL, WHOSE RESIGNATION WAS CALLED FOR IN A ST. LOUIS POST-DISPATCH EDITORIAL.

KLEIN TOLD A \$100-A-PLATE MISSOURI REPUBLICAN FUND-RAISING DINNER HE WAS "DISAPPOINTED BUT NOT SURPRISED" BY THE EDITORIAL, PUBLISHED IN TUESDAY'S EDITIONS.

"WE'VE HAD SIMILAR RECOMMENDATIONS FROM THE POST-DISPATCH BEFORE," HE SAID.

"I AM PROUD OF HIS (MITCHELL'S) RECORD. I GO ON RECORD HERE AS IN SUPPORT OF THE ATTORNEY GENERAL."

THE EDITORIAL SAID "IT IS DIFFICULT TO ASSESS NOW MITCHELL CAN RETAIN HIS JOB "AFTER THE MONUMENTAL BLUNDER OF THE LEGAL ATTACK ON THE NEW YORK TIMES AND THE WASHINGTON POST."

6/23--GE1151A

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REC-32

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UPI-8

(VIET REPORTS)

CHICAGO--THE CHICAGO SUN-TIMES, IN TODAY'S EDITIONS, SAID "TOP SECRET STATE DEPARTMENT AND PENTAGON DOCUMENTS" SHOW THE LATE PRESIDENT KENNEDY AND HIS ADVISERS "WERE INTIMATELY INVOLVED IN THE MANEUVERING THAT LED TO THE DOWNFALL OF SOUTH VIETNAMESE PRESIDENT NGO DINH DIEM."

THE DOCUMENTS, THE SUN-TIMES SAID IN A COPYRIGHTED STORY, INCLUDED STATE DEPARTMENT MEMOS DECLASSIFIED IN 1968 AND DOCUMENTS INCLUDED IN THE STILL TOP-SECRET PENTAGON STUDY OF THE WAR.

THE SUN-TIMES PRINTED THE TEXT OF ONE STATE DEPARTMENT MEMO AND A PARTIAL TEXT OF THE OTHER.

"THE DOCUMENTS SHOW," THE SUN-TIMES STORY BY MORTON KONDRACKI AND THOMAS B. ROSS SAID, "THAT KENNEDY DECIDED AT A NATIONAL SECURITY COUNCIL MEETING ON SEPT. 17, 1963, TO PUT 'ESCALATORY PRESSURE' ON DIEM TO GET RID OF HIS BROTHER NGO DINH NHU, CHIEF OF THE SECRET POLICE."

"THE DOCUMENTS ALSO RECOMMENDED ACTION AGAINST ANY DIEM MOVES TO COUNTER HIS GENERALS OR NEGOTIATE WITH NORTH VIETNAM."

THE TEXT OF A MEMO ALLEGEDLY WRITTEN AUG. 30, 1963, FROM ASSISTANT SECRETARY OF STATE ROGER HILSMAN TO SECRETARY OF STATE DEAN RUSK ACCOMPANIED THE ARTICLE.

THE TEXT, AS PRINTED IN THE SUN-TIMES, INCLUDED HILSMAN'S ASSESSMENT OF 11 MOVES WHICH "DIEM AND NHU COULD TAKE TO MAINTAIN THEMSELVES IN POWER AND THE UNITED STATES RESPONSES THERETO..."

TO MANY OF DIEM'S POSSIBLE MOVES, THE TEXT SAID, THE BEST U.S. RESPONSE WOULD BE ENCOURAGEMENT TO THE SOUTH VIETNAMESE GENERALS TO HURRY THEIR COUP. IN ADVISING ON HOW TO MEET ONE SUCH MOVE, THE TEXT SAID, "THIS SITUATION AGAIN SHOWS THE IMPORTANCE OF SPEED ON THE PART OF BOTH THE U.S. AND VIETNAMESE SIDES."

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THE COUP WAS CARRIED OUT NOV. 1, 1963. DIEM WAS ASSASSINATED. "THE PRESIDENT AND HIS LEADING ADVISERS DISAVOWED ANY CONNECTION WITH HIS BLOODY END," THE SUN-TIMES STORY SAID. "BUT TWO MONTHS EARLIER, ROGER WILSHAM, ASSISTANT SECRETARY OF STATE FOR THE FAR EAST, HAD RECOMMENDED IN AN AUG. 30 MEMO TO SEC. OF STATE DEAN RUSK: "UNCONDITIONAL SURRENDER SHOULD BE THE TERMS FOR THE NGO FAMILY...DIEM SHOULD BE TREATED AS THE GENERALS WISH."

THREE OTHER NEWSPAPERS WERE UNDER ORDERS TODAY NOT TO PUBLISH ANY MORE OF THE CLASSIFIED PENTAGON REPORTS PENDING FURTHER COURT ACTION.

THE GOVERNMENT, IN APPEALING RULINGS WHICH GAVE THE NEW YORK TIMES AND WASHINGTON POST PERMISSION TO PUBLISH THE PENTAGON REPORT, OFFERED A COMPROMISE TUESDAY TO SET UP A TASK FORCE TO STUDY DECLASSIFICATION OF DOCUMENTS. THE POST REJECTED THE IDEA. THE TIMES DID NOT COMMENT.

THE BOSTON GLOBE, WHICH PUBLISHED ITS FIRST STORY ON THE REPORT IN TUESDAY'S EDITIONS, WAS ORDERED TEMPORARILY TO STOP FURTHER PUBLICATION AND TO TURN OVER ALL DOCUMENTS TO THE COURT. THE GLOBE SAID IT WOULD COMPLY WITH THE FIRST ORDER AND WOULD DECIDE TODAY ON THE SECOND.

APPEALS COURTS IN WASHINGTON AND NEW YORK TOOK THE POST AND TIMES CASES UNDER ADVISEMENT AND SAID THEY WOULD RULE SHORTLY. A HEARING ON THE GLOBE'S CASE WAS SCHEDULED FOR FRIDAY IN U.S. DISTRICT COURT.

THE WHITE HOUSE ANNOUNCED TUESDAY IT WAS SPEEDING DECLASSIFICATION OF THE PENTAGON REPORTS AND PRESIDENT NIXON IN JANUARY HAD ORDERED A BROAD REVIEW OF CURRENT CLASSIFICATION PROCEDURES.

A SHORT TIME LATER, SOLICITOR GENERAL ERWIN N. GRISWOLD TOLD THE U.S. CIRCUIT COURT OF APPEALS HEARING THE POST CASE OF HIS OFFER TO APPOINT IMMEDIATELY "A TASK FORCE TO ATTEMPT EXHAUSTIVE DECLASSIFICATION OF THE (PENTAGON) DOCUMENTS." HE PROMISED IT WOULD BE FINISHED IN 45 DAYS.

GRISWOLD SAID THE GOVERNMENT THEN WOULD WITHDRAW ITS OBJECTIONS TO THE PRINTING OF PORTIONS OF THE STUDY NO LONGER CONSIDERED TOP SECRET.

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UPI-9

(VIET REPORTS)

WASHINGTON--REP. PAUL N. MCCLOSKEY JR., R-CALIF., SAYS HE SPOKE WITH DANIEL ELLSBERG "A FEW DAYS AGO" AND FEELS THE FORMER PENTAGON AIDE WOULD BE WILLING TO TESTIFY BEFORE CONGRESS ON THE VIETNAM POLICY REPORT HE ALLEGEDLY LEAKED TO THE NEW YORK TIMES.

THE HOUSE FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE WAS BEGINNING HEARINGS TODAY ON THE VIETNAM PAPERS SITUATION, WITH ELLSBERG INVITED TO APPEAR. FORMER SUPREME COURT JUSTICE ARTHUR GOLDBERG WAS CALLED AS AN OPENING WITNESS.

AT THE SAME TIME, TWO MEMBERS OF THE COMMITTEE, REPS. JOHN MOSS, D-CALIF., AND OGDEN REID, R-N.Y., READIED A SUIT FOR FEDERAL COURT IN A MOVE TO FORCE DEFENSE SECRETARY MELVIN R. LAIRD TO JUSTIFY HIS REFUSAL TO TURN OVER A COPY OF THE 47-VOLUME WAR STUDY TO THE TWO CONGRESSMEN.

ELLSBERG, WHO WORKED FOR THE DEFENSE AND STATE DEPARTMENTS AND LATER FOR THE RESEARCH COMPANY WHICH HELPED THE PENTAGON PREPARE THE WAR HISTORY REPORT, HAS BEEN REPORTED TO BE THE ONE WHO MADE THE TOP SECRET STUDY AVAILABLE TO THE NEW YORK TIMES.

MCCLOSKEY SAID HE WAS GIVEN A SIMILAR SET OF PAPERS BY ELLSBERG. HE TOLD NEWSMEN TUESDAY HE DOES NOT KNOW WHERE THE PART-TIME RESEARCHER AT MASSACHUSETTS INSTITUTE OF TECHNOLOGY IS, BUT SAID HE IS SURE ELLSBERG IS NOT HIDING FROM FEDERAL AUTHORITIES.

"I DON'T THINK HE'S AVOIDING THE LAW," MCCLOSKEY SAID. "I THINK HE'S AVOIDING THE ASSIDUOUSNESS OF THE PRESS."

IN ANOTHER DEVELOPMENT, J. WILLIAM FULBRIGHT ANNOUNCED THAT HIS SENATE FOREIGN RELATIONS COMMITTEE WILL HOLD A FULL INVESTIGATION INTO THE HISTORY OF U.S. INVOLVEMENT IN VIETNAM -- A PROBE PROMPTED AT LEAST IN PART BY DISCLOSURE OF THE PENTAGON PAPERS.

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UPI-122

(VIET REPORTS)

BOSTON--FEDERAL JUDGE ANTHONY JULIAN TODAY RULED THE BOSTON GLOBE DOES NOT HAVE TO TURN OVER TOP SECRET PENTAGON DOCUMENTS TO THE GOVERNMENT, DESPITE A RESTRAINING ORDER PROHIBITING FURTHER PUBLICATION OF THE DOCUMENTS.

JULIAN, RULING ON A MOTION MADE BY THE GLOBE, SAID THE DOCUMENTS SHALL BE PLACED IN A BANK SAFE DEPOSIT VAULT WITH ACCESS LIMITED TO JOHN S. DRISCOLL, GLOBE ASSISTANT EDITOR, AND TO THE NEWSPAPER'S ATTORNEYS.

JULIAN GRANTED A TEMPORARY RESTRAINING ORDER TUESDAY PROHIBITING THE NEWSPAPER FROM PUBLISHING FURTHER EXCERPTS FROM A 47-VOLUME DEFENSE DEPARTMENT STUDY ENTITLED "HISTORY OF U.S. DECISION MAKING PROCESS ON VIETNAM POLICY." THE RESTRAINING ORDER IS SCHEDULED TO EXPIRE JULY 1 AT 5 P.M. UNLESS FURTHER EXTENDED BY THE COURT. A HEARING IS SCHEDULED FOR FRIDAY ON WHETHER A PRELIMINARY INJUNCTION SHOULD BE GRANTED TO REPLACE THE TEMPORARY RESTRAINING ORDER.

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UPI-71

(VIET REPORTS)

WASHINGTON--ARTHUR J. GOLDBERG TESTIFIED TODAY HE FELT "THE WHOLE STORY" SHOULD BE TOLD TO THE PUBLIC ABOUT HOW THE UNITED STATES GOT INVOLVED IN VIETNAM, AND TWO CONGRESSMEN FILED FEDERAL SUIT TO TRY TO FORCE THE PENTAGON TO MAKE PUBLIC A SECRET ACCOUNT OF THE POLICY-MAKING.

GOLDBERG, A SUPREME COURT JUSTICE BETWEEN 1965² AND 1968, WAS LEADOFF WITNESS BEFORE THE HOUSE SUBCOMMITTEE LOOKING INTO THE CONTROVERSY BETWEEN THE GOVERNMENT AND THE PRESS OVER PUBLICATION OF ACCOUNTS OF THE 7,000-PAGE VIETNAM SUMMARY.

GOLDBERG RECOMMENDED THAT CONGRESS RESOLVE THE CONFLICT OVER FREEDOM OF THE PRESS VS. NATIONAL SECURITY INTEREST BY CONDUCTING A SPECIAL INVESTIGATION INTO THE ORIGINS AND CONDUCT OF THE VIETNAM WAR.

TWO MEMBERS OF THE FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE, REPS. JOHN E. MOSS, D-CALIF., AND OGDEN R. REID, R-N.Y., FILED SUIT IN U.S. DISTRICT COURT, AT THE FOOT OF CAPITOL HILL, TO FORCE DEFENSE SECRETARY MELVIN R. LAIRD TO MAKE PUBLIC THE "HISTORY OF U.S. DECISION-MAKING PROCESS ON VIETNAM POLICY" ORDERED PREPARED BY ROBERT S. MCNAMARA IN 1967 WHEN HE WAS DEFENSE SECRETARY.

THE SUIT WAS FILED UNDER THE FREEDOM OF INFORMATION ACT. IT ACCUSED THE GOVERNMENT OF "IMPROPERLY WITHHOLDING" THE MATERIAL -- SOME OF WHICH HAS BEEN PUBLISHED OR DIRECTLY REFERRED TO IN VARIOUS NEWSPAPER ACCOUNTS.

THE GOVERNMENT UP TO TODAY HAD OBTAINED COURT ORDERS TO HALT THREE NEWSPAPERS FROM PUBLISHING FURTHER MATTER FROM THE SECRET DOCUMENTS. THE GOVERNMENT CONTENDS THE NATIONAL SECURITY IS AT ISSUE. THE PRESS MAINTAINS THAT THE GOVERNMENT ACTION TO STOP PUBLICATION IS AN INFRINGEMENT ON FREEDOM OF THE PRESS AS GUARANTEED IN THE FIRST AMENDMENT.

CORRECTION;

EX-100

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IN 2ND PGH READ 2ND PGH X & X JUSTICE BETWEEN 1962 AND 1965 (STED 1965 TO 1968).

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UPI-73

ADD 1 VIET REPORTS, WASHINGTON (UPI-78)

GOLDBERG TESTIFIED AT THE OUTSET OF THE HOUSE HEARING: "I HAVE NEVER SEEN THE PENTAGON STUDY, BUT ALL SHOULD AGREE -- INCLUDING ALL GOVERNMENT OFFICIALS INVOLVED, THE PUBLIC AND THE PRESS -- THAT IT WOULD BE FAR BETTER FOR OUR COUNTRY THAT THE WHOLE STORY BE TOLD."

GOLDBERG SAID THAT BECAUSE OF THE LITIGATION UNDERWAY INVOLVING NEWSPAPERS AND THE GOVERNMENT, HIS TESTIMONY WAS DIRECTED AT THE ISSUE OF "RECONCILING THE NEEDS OF THE GOVERNMENT AND THE RIGHTS OF THE CITIZENS TO INFORMATION ON THE OPERATIONS OF GOVERNMENT."

HE SAID HE REGRETTED THE CONFRONTATION THAT HAD DEVELOPED BETWEEN THE PRESS AND THE GOVERNMENT AND ASSERTED:

"I THINK THE PRESENT IMPASSE MAKES IT IMPERATIVE THAT A SELECT COMMITTEE OF CONGRESS CONDUCT A SPECIAL INVESTIGATION INTO THE CAUSES AND CONDUCT OF THE WAR IN VIETNAM. REGARDLESS OF HOW THE VARIOUS LAW SUITS TURN OUT, SUCH AN INVESTIGATION IS NECESSARY TO PRESERVE PUBLIC TRUST IN THE CANDOR AND COMPETENCE OF OUR OFFICIALS AND INDEED, OF OUR GOVERNMENT ITSELF."

HE SAID THE INVESTIGATIONS SHOULD BE ACCOMPANIED BY PUBLIC DISCLOSURE OF DOCUMENTS WHERE SECRECY WAS NO LONGER WARRANTED.

GOLDBERG, WHO LEFT THE HIGH COURT TO BECOME PRESIDENT LYNDON B. JOHNSON'S AMBASSADOR TO THE UNITED NATIONS BETWEEN 1965 AND 1968, ADDED:

"THE PUBLIC, ALONG WITH CONGRESS, IS ENTITLED TO KNOW, SUBJECT ONLY TO GENUINE NATIONAL AND DIPLOMATIC AND SECURITY CONSIDERATIONS, ALL THAT OCCURRED LEADING TO THE MOMENTOUS DECISIONS OF THIS TRAGIC WAR."

DURING HIS U.N. SERVICE, GOLDBERG SAID HE "READ AND PREPARED COUNTLESS THOUSANDS OF CLASSIFIED DOCUMENTS AND PARTICIPATED IN CLASSIFYING SOME OF THEM" AND THAT "75 PER CENT OF THESE NEVER SHOULD HAVE BEEN CLASSIFIED IN THE FIRST PLACE."

HE SAID THAT "AS I REFLECT UPON MY THREE YEARS AT THE U.N., I MUST CONCLUDE THAT NEARLY EVERY MEMO OF MINE TO THE PRESIDENT AND OTHER HIGH RANKING OFFICIALS COULD SAFELY BE DISCLOSED."

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UPI-82

ADD 2 VIET REPORTS, WASHINGTON

MOSS AND REID SAID LAIRD REJECTED THEIR WRITTEN REQUEST THAT HE RELEASE THE DOCUMENTS. BUT SOON AFTER THE SUIT WAS FILED THE DEFENSE DEPARTMENT DISCLOSED THAT LAIRD HAD MET INFORMALLY WITH SOME MEMBERS OF CONGRESS TO DISCUSS PROVIDING THEM COPIES OF THE REPORT.

JERRY W. FRIEDHEIM, A PENTAGON SPOKESMAN, REFUSED TO IDENTIFY THE MEMBERS OF CONGRESS OR TO SAY WHETHER AGREEMENT HAD BEEN REACHED ON HANDING OVER COPIES OF THE STUDY.

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UPI-86

ADD 3 VIET REPORTS, WASHINGTON

PRESIDENT NIXON, MEANWHILE, SENT CONGRESS THE SECRET PENTAGON
 REPORT ON THE VIETNAM WAR.

PRESS SECRETARY ZIEGLER SAID NIXON INFORMED SENATE MAJORITY
 LEADER MIKE MANSFIELD OF HIS DECISION AT A BREAKFAST MEETING TODAY.
 HE SAID NIXON DECIDED TO TAKE THE STEP BECAUSE PARTIAL PUBLICATION
 OF THE DOCUMENTS WOULD NECESSARILY LEAD CONGRESS TO MAKE JUDGMENT
 "ON THE BASIS OF INCOMPLETE DATA WHICH COULD GIVE A DISTORTED
 IMPRESSION OF THE REPORT'S CONTENT."

ZIEGLER SAID THAT NIXON TOLD MANSFIELD HE COULD NOT VOUCH FOR
 THE ACCURACY OR COMPLETENESS OF THE DOCUMENTS SINCE THEY RELATE
 PRIMARILY TO EVENTS IN THE ADMINISTRATION OF KENNEDY AND JOHNSON.

NIXON ALSO TOLD MANSFIELD THE DOCUMENTS WOULD RETAIN THEIR TOP
 SECRET CLASSIFICATION PENDING COMPLETION OF A DECLASSIFICATION
 REVIEW THE PRESIDENT ALREADY HAS ORDERED.

6-23--PA1211PED

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UPI-88

ADD 4 VIET REPORTS, WASHINGTON

THE REPORTS BEGAN ARRIVING AT THE CAPITOL ABOUT THE SAME TIME THAT ZEIGLER WAS MAKING HIS ANNOUNCEMENT AT THE WHITE HOUSE.

THE VOLUMES WERE BROUGHT TO THE SENATE BY MESSENGER AND PLACED ON THE FRONT DESK, ACCORDING TO A SPOKESMAN FOR SEN. ROBERT C. BYRD, D-W. VA. THEY WERE SWIFTLY TAKEN TO THE SENATE ARMED SERVICES COMMITTEE.

BYRD'S SPOKESMAN SAID THE SENATOR WAS NOTIFIED ABOUT THE DEVELOPMENT THIS MORNING. BYRD IS THE SENATE DEMOCRATIC WHIP AND ACTING AS MAJORITY LEADER IN THE ABSENCE OF MANSFIELD.

THE PAPERS ARRIVED AT 11 A. M. A HALF HOUR BEFORE THE SENATE WAS IN SESSION.

FLOYD M. RIDDICK, THE SENATE PARLIAMENTARIAN, WAS AT THE DESK WHEN THE PAPERS ARRIVED AND DIRECTED THEM TO THE ARMED SERVICES COMMITTEE.

WHEN THE SENATE WAS CALLED INTO SESSION AT 11:30 A. M., NO ANNOUNCEMENT WAS MADE THAT THE REPORT WAS RECEIVED.

ON THE HOUSE SIDE, SPEAKER CARL ALBERT SAID THE WHITE HOUSE ADVISED HIM THE 47-VOLUME STUDY WOULD BE TURNED OVER TO THE LAWMAKERS WITHOUT, AS FAR AS ALBERT KNEW, ANY RESTRICTIONS ON THEIR DISPOSITION.

HIS INCLINATION, WITHOUT HAVING SEEN THEM, WAS TO REFER THE PAPERS TO THE ARMED SERVICES COMMITTEE, ALBERT SAID.

ARMED SERVICES CHAIRMAN F. EDWARD HEBERT, D-LA., ASKED WHAT HE MIGHT DO WITH THEM SAID ONLY THAT HE WOULD TAKE WHATEVER ACTION SEEMED APPROPRIATE.

ALBERT FIRST TOLD NEWSMEN, "I'VE BEEN TOLD HE (THE PRESIDENT) WAS GOING TO RELEASE THE PENTAGON PAPERS."

HOWEVER, UNDER QUESTIONING, HE SAID HE SPECIFICALLY WAS ADVISED THE DOCUMENTS WERE BEING TRANSMITTED TO CONGRESS, AND THAT HE DID NOT KNOW WHETHER OR NOT THEY WERE BEING MADE PUBLIC.

HEBERT DECLINED TO SPECULATE ON WHETHER HIS COMMITTEE, IF AWARDED CUSTODY OF THE PAPERS, MIGHT MAKE SOME OR ALL OF THEM PUBLIC.

"I WILL TAKE THE APPROPRIATE ACTION," HEBERT TOLD NEWSMEN.

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UPI-89

ADD 5 VIET REPORTS, WASHINGTON

ZIEGLER SAID THE DOCUMENTS WOULD BE DELIVERED TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE "FOR THE DISPOSAL AS THE LEADER OF EACH HOUSES SHALL DECIDE."

IN A MEETING DEFENSE SECRETARY LAIRD TODAY THE PRESIDENT INSTRUCTED HIM TO WORK OUT ARRANGEMENTS WITH JOINT CONGRESSIONAL LEADERSHIP.

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UPI-92

ADD 6 VIET REPORTS, WASHINGTON
 THE TEXT OF ZEIGLER'S ANNOUNCEMENT:

"THE PRESIDENT VOLUNTEERED TO MAKE AVAILABLE TO THE SENATE AND HOUSE THE 47 VOLUMES OF THE KENNEDY-JOHNSON ADMINISTRATION'S REPORT ON VIETNAM AS WELL AS A COPY OF THE 1965 STUDY OF THE TONKIN GULF INCIDENT.

"THE DOCUMENTS WHICH ARE CLASSIFIED TOP SECRET, HAVE NOT BEEN PREVIOUSLY MADE AVAILABLE TO EITHER HOUSE OF CONGRESS.

"AS WAS INDICATED YESTERDAY THE PRESIDENT HAS DIRECTED THE DECLASSIFICATION REVIEW OF THESE DOCUMENTS PURSUANT TO HIS JANUARY 15, 1971 ORDER INSTITUTING A REVIEW OF CLASSIFICATION OF SUCH DOCUMENTS.

"PRESIDENT NIXON TOLD SENATOR MANSFIELD THAT THE UNAUTHORIZED PUBLICATIONS OF PORTIONS OF THE DOCUMENT CREATED A SITUATION IN WHICH CONGRESS WOULD NECESSARILY BE MAKING JUDGEMENTS IN THIS MATTER ON THE BASIS OF INCOMPLETE DATA WHICH COULD GIVE A DISTORTED IMPRESSION OF THE REPORT'S CONTENTS. FOR THAT REASON, THE PRESIDENT FEELS THAT IT IS ONLY FAIR TO CONGRESS AND TO PERSONS MENTIONED IN THE DOCUMENTS THAT THE FULL REPORT BE MADE AVAILABLE.

*SINCE THE DOCUMENTS RELATE PRIMARILY TO THE JOHNSON AND KENNEDY PERIODS, PRESIDENT NIXON POINTED OUT THAT HE IS NOT IN A POSITION TO VOUCH FOR THEIR ACCURACY OR COMPLETENESS.

*DESPITE THE PUBLICATION OF SOME PORTIONS OF THE DOCUMENTS, THEY WILL RETAIN THEIR TOP SECRET CLASSIFICATION PENDING COMPLETION OF THE DECLASSIFICATION REVIEW AND WILL BE MADE AVAILABLE TO THE CONGRESS ON THE UNDERSTANDING THAT THEY WILL BE SUBJECT TO EXISTING CONGRESSIONAL RULES AND REGULATIONS COVERING THE HANDLING OF CLASSIFIED MATERIAL.

*PRESIDENT NIXON REITERATED TO SENATOR MANSFIELD THAT HIS PRIMARY AND CONTINUING CONCERN HAS BEEN TO PROTECT THE SECURITY OF GOVERNMENT DOCUMENTS IN CASES WHERE DISCLOSURE COULD HARM THE NATIONAL SECURITY OR IMPAIR NEGOTIATIONS WITH OTHER NATIONS.

*PRESIDENT NIXON ALSO EMPHASIZED THAT THE DECISION TO OFFER THE DOCUMENTS TO THE CONGRESS DOES NOT REPRESENT A CHANGE OF POLICY BUT MERELY REFLECT THE SPECIAL CIRCUMSTANCES CREATED BY THE RECENT UNAUTHORIZED DISCLOSURES.

*THE DOCUMENTS WILL BE DELIVERED TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE FOR SUCH DISPOSITION AS THE JOINT LEADERSHIP SHALL DETERMINE."

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ADD 7 VIET REPORTS, WASHINGTON

A SPOKESMAN FOR SEN. ROBERT C. BYRD, D-W. VA., REPORTED THAT THE PAPERS HAD ARRIVED AT 11 A. M. AT THE FRONT DESK OF THE SENATE.

BUT, LATER, THE CHIEF PARLIAMENTARIAN, FLOYD RIDDICK, SAID HE HAD NOT YET SEEN THE DOCUMENTS AND BYRD--ACTING AS MAJORITY LEADER IN THE ABSENCE OF MANSFIELD--SAID HE HAD NOT SEEN THEM EITHER.

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UPI-97

ADD 8 VIET REPORTS, WASHINGTON

HOUSE REPUBLICAN LEADER GERALD R. FORD OF MICHIGAN SAID HE WAS INFORMED BY LAIRD SHORTLY BEFORE NOON THAT COPIES OF THE REPORT WOULD BE SENT TO HIM AND ALBERT AND TO THEIR RESPECTIVE COUNTERPARTS IN THE SENATE, SENATORS HUGH SCOTT, R-PA. AND MANSFIELD.

"I WAS TOLD THE DOCUMENTS WOULD HAVE THE CLASSIFICATION ON THEM BUT SECRETARY LAIRD TOLD ME THE PRESIDENT ORDERED HIM TO DECLASSIFY THEM AS QUICKLY AS POSSIBLE," FORD TOLD UPI.

FORD SAID HE EXPECTED THAT HE, ALBERT, MANSFIELD AND SCOTT WOULD MEET TO DECIDE WHAT TO DO WITH THE REPORTS.

REP. PAUL MC CLOSKEY SAID HE DID NOT MEAN HE WAS INSISTING THAT THE REPORT BE MADE PUBLIC BUT THAT AT LEAST ALL MEMBERS OF THE HOUSE HAVE ACCESS TO IT.

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UPI-98

ADD 9 VIET REPORTS, WASHINGTON

ZIEGLER SAID THAT NIXON ALSO VOLUNTARILY DECIDED TO SEND CONGRESS A 1965 STUDY OF THE GULF OF TONKIN INCIDENT WHICH HITHERTO HAS BEEN DENIED HOUSE AND SENATE COMMITTEES. THE COMMUNIST TORPEDO BOAT ATTACKS ON TWO U. S. DESTROYERS OFF THE VIETNAM COAST PROVIDED FORMER PRESIDENT LYNDON B. JOHNSON THE SPRINGBOARD TO WIN CONGRESSIONAL BACKING OF DEEPER U. S. COMBAT INVOLVEMENT.

SENATE REPUBLICAN WHIP ROBERT C. GRIFFIN, MEANTIME, SAID THE REPUBLICAN LEADERSHIP WOULD PROPOSE THAT A SELECT SENATE COMMITTEE BE APPOINTED TO MAKE AN INQUIRY INTO THE ORIGINS OF THE WAR--USING THE 47 VOLUMES AS THE BASIS FOR THE STUDY.

SINCE THE PAPERS STILL ARE TOP SECRET, GRIFFIN TOLD NEWSMEN THE HEARINGS MIGHT HAVE TO BE HELD BEHIND CLOSED DOORS.

GRIFFIN SAID HE UNDERSTOOD THE REPUBLICAN AND DEMOCRATIC SENATE LEADERS WOULD MEET LATER IN THE DAY TO DETERMINE WHO SHOULD MAKE THE INQUIRY.

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UPI-101

ADD 10 VIET REPORTS, WASHINGTON

GRIFFIN SAID REPUBLICAN LEADER HUGH J. SCOTT, PA., "BELIEVES IT WOULD BE APPROPRIATE TO APPOINT A SELECT COMMITTEE" TO CONDUCT THE STUDY, RATHER THAN HAVE A LOT OF COMMITTEES GOING OFF IN DIFFERENT DIRECTIONS."

SEN. BYRD SAID FLOYD RIDDICK--THE SENATE CHIEF PARLIAMENTARIAN-- WOULD MAKE THE INITIAL DETERMINATION WHERE TO SEND THE PAPERS. RIDDICK SAID HIS DETERMINATION WOULD BE BASED ON THE NATURE OF THE COVERING LETTER THE WHITE HOUSE SENDS WITH THE DOCUMENTS.

SPEAKER ALBERT MEANTIME, SAID THAT UNDER THE RULES OF THE HOUSE ALL MEMBERS WOULD BE PERMITTED TO READ THE DOCUMENTS.

IN ACCORDANCE WITH PREVIOUS PRACTICE, SAID THE SPEAKER, LAWMAKERS WOULD NOT BE ALLOWED TO COPY ANYTHING FROM THE PAPERS. AND BECAUSE THE DOCUMENTS RETAIN THEIR TOP SECRET CLASSIFICATION, MEMBERS WOULD NOT BE ALLOWED TO DISCUSS THEM PUBLICLY.

MEMBERS WILL HAVE TO DO THEIR READING IN THE OFFICES OF THE ARMED SERVICES COMMITTEE, WHERE THE DOCUMENTS WILL RESIDE.

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UPI-108

ADD 11 VIET REPORTS, WASHINGTON
AT THE COURTHOUSE, LAWYERS FOR THE GOVERNMENT AND THE POST
CONFERRED BRIEFLY AT MIDDAY WITH THE APPEALS COURT'S CHIEF DEPUTY
CLERK, HUGH KLINE. ALL DECLINED COMMENT AFTER THE MEETING AND
THERE WAS NO INDICATION WHEN THE COURT MIGHT RULE.

6/23-GE121P

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UPI-109

ADD 12 VIET REPORTS, WASHINGTON

MCCLOSKEY SAID HE WOULD TRY TO GET OVER TO THE COMMITTEE TODAY AND READ THE DOCUMENTS. ONE OF HIS OBJECTIVES, HE ADDED, WOULD BE TO SEE WHETHER THE 47-VOLUMES INCLUDES THE CONSIDERABLY SMALLER STUDY ON THE SAME SUBJECT HE WAS GIVEN BY FORMER DEFENSE AIDE DANIEL ELLSBERG, UNDER SUSPICION AS THE SOURCE FOR NEW YORK TIMES STORIES ON THE REPORT.

THE PRESIDENT'S ACTION REMOVES THE ONE OBJECTION OF MCCLOSKEY AND OTHER LAWMAKERS -- THAT CONGRESS BE GRANTED ACCESS TO THE STUDY SO THAT IT CAN CARRY OUT ITS CONSTITUTIONAL RESPONSIBILITIES.

BUT REPS. MOSS AND REID MADE IT CLEAR THEY WOULD PRESS THEIR SUIT, FILED IN FEDERAL COURT TODAY UNDER THE FREEDOM OF INFORMATION LAW, TO MAKE THE ENTIRE REPORT PUBLIC. THE GOVERNMENT HAS 60 DAYS TO PRESENT ITS JUSTIFICATION FOR CLASSIFYING THE DOCUMENTS STUDY.

6/23-GE123P

REC-29

Ellsberg Would Testify, Rep. McCloskey Believes

By RONALD SARRO
Star Staff Writer

Rep. Paul M. McCloskey Jr., R-Calif., says he believes former Pentagon official Daniel Ellsberg, reportedly the source of leaked Pentagon documents on U.S. involvement in Indochina, is willing to testify before a congressional committee.

McCloskey, disclosing he talked with Ellsberg "a few days ago, by telephone" said, "I don't think he has any objection" to testifying about his knowledge of the Pentagon study on the war's evolution.

The California Republican has publicly identified Ellsberg as the source of about 600 pages of Pentagon information he has obtained. Ellsberg also has been identified by a free lance writer as the source of articles on the study published in the New York Times. He has not been seen publicly since last Wednesday.

Two FBI agents visited McCloskey in his office yesterday seeking information on the documents he has. McCloskey said he told them Ellsberg gave him the papers, and that they bore no classified markings. He said the agents did not ask for the documents.

McCloskey, a leading opponent of the war, plans to present a summary of his papers to the foreign operations and government information subcommittee of the House Government Operations Committee, which starts hearing today on freedom of information about the war.

The congressman, a member of the subcommittee, is scheduled to testify as a witness tomorrow. But with the information he has in hand, McCloskey said that as a member, "I am looking forward with great pleasure to the chance to cross-examine witnesses."

Subcommittee Chairman William S. Moorhead, D-Pa., said yesterday he would like Ellsberg to appear if he can be located. McCloskey told reporters he can contact Ellsberg through his attorney, whom he would not identify.

Plans to Press Rights

Moorhead's subcommittee plans to seek testimony on the rights of Congress, the press and the public to information under the 1967 Freedom of Information Act, and an executive memorandum circulated by President Nixon in April 1969 on use of "executive privilege" to withhold data.

Subcommittee members believe the administration has violated terms of the memorandum by refusing to honor the subcommittee's request for a copy of the Pentagon study on the war. Moorhead asked Defense Secretary Melvin R. Laird to submit a copy by yesterday, but no copy was received.

The chief architects of the Freedom of Information Act, Reps. John E. Moss, D-Calif., and Ogden Reid, R-N.Y., said they would sue Laird under a provision of the act requiring any challenged agency to prove in court its withholding of information is justified.

They said Laird's announcement yesterday that he has ordered a 90-day study on de-

classifying as much as possible of the study will not affect their suit.

Scheduled to testify today before Moorhead's subcommittee were Arthur J. Goldberg, former United Nations ambassador; Prof. Joseph Bishop of Yale Law School, and Lee White, an attorney who was special counsel to President Kennedy.

McCloskey said yesterday he is allowing any member of Congress who requests to see his documents to visit his office and study them. Three have done so, including Rep. Donald Riegle, R-Mich., who looked at them yesterday afternoon.

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The Washington Post Times Herald ☐
The Washington Daily News ☐
The Evening Star (Washington) ☒
The Sunday Star (Washington) ☐
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Sunday News (New York) ☐
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The New Leader ☐
The Wall Street Journal ☐
The National Observer ☐
People's World ☐

JUN 23 1971

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File 5 - ERH

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70 JUL 8 1971



-United Press International

**Rep. Paul McCloskey checks his office safe
which he says contains documents on the
Vietnam war.**

Hilsman's Viet Memo Bared in Sun-Times

CHICAGO, June 23 (AP)—

The Chicago Sun-Times said today it has top-secret State Department documents that show that high-ranking Kennedy administration officials had intimate advance knowledge of the 1963 coup that toppled South Vietnamese President Ngo Dinh Diem.

The paper said the documents were turned over to the Sun-Times by the Citizens Commission of Inquiry into U.S. War Crimes in Vietnam.

The paper, in a copyright article appearing in its second edition for Wednesday, also printed a partial text of an Aug. 30, 1963, memorandum from Roger Hilsman, then Assistant Secretary of State, to Secretary of State Dean Rusk. The memorandum, the Sun-Times said, recommended the United States encourage and assist in a coup against Diem.

James F. Hoge Jr., editor, said part of the material used in the story came from the same Pentagon report, parts of which The New York Times, The Washington Post and the Boston Globe have published.

The documents, the paper said, disclose that Rusk was warned by Hilsman two months before the coup that Diem might move to open "neutralization negotiations" with North Vietnam.

If North Vietnam threatened to intervene on Diem's side against a coup, Hilsman recommended that the United States should "let it know unequivocally that we shall hit the DRV (North Vietnam) with all that is necessary to force it to desist."

Diem was ousted and assassinated in late 1963.

The Sun-Times said the documents show that Hilsman urged bringing all of Diem's family "under the control of the coup group."

Diem's brother-in-law, Ngo Dinh Nhu, was head of the secret police.

"We should warn the coup group," the Sun-Times said Hilsman wrote in the Aug. 30 memo, "to press any military advantage it gains to its logical conclusion without stopping to negotiate."

The Sun-Times said Hilsman advised Rusk that if Diem chose to make a last stand at the Presidential Palace, to "encourage the coup group to fight the battle to the end and to destroy the Palace if necessary to gain victory."

"Unconditional surrender should be the terms for the

Ngo family," the paper quotes the memo. "... Diem should be treated as the generals wish."

The coup came Nov. 1.

The Sun-Times said Hilsman's memo recommended that if Diem chose to leave the country with his family, the United States provide him with a plane but only if Diem agreed to go to France or another European country.

"Under no circumstances," the Sun-Times quotes the memo, "should the Nhuses be permitted to remain in Southeast Asia in close proximity to Vietnam because of the plots they will try to mount to regain power."

The text of the memo consisted of proposed U.S. responses to actions Deim and Nhu might have taken.

Should Deim and Nhu "move toward the DRV (North Vietnam) such as opening of neu-

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REC-47

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The National Observer _____
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EX 101

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tralization negotiations, or rumors and indirect threats of such a move," Hilsman was quoted as having suggested the following in the memo:

- "Ambassador Henry Cabot Lodge should give Diem a clear warning of the dangers of such a course, and point out its continued pursuit will lead to cessation of U.S. aid.

- "Encourage the generals to move promptly with a coup.

- "We should publicize to the word at an appropriate moment any threats or move by Diem or Nhu toward the DRV in order to show the two-edged game they are playing and help justify publicly our counteractions.

- "If the DRV threatens to respond to an anti-Diem coup by sending troops openly to South Vietnam, we should let it know unequivocally that we shall hit the DRV with all that

is necessary to force it to desist."

If Diem and Nhu had appealed to France's Charles de Gaulle for political support for neutralization of Vietnam, Hilsman was quoted as recommending:

- "We should point out publicly that Vietnam cannot be effectively neutralized unless the Communists are removed from control of North Vietnam. If a coalition between Diem and the Communists is suggested, we should reply that this would be the avenue to a Communist takeover in view of the relative strength of the principals in the coalition.

"Once an anti-Diem coup is started in South Vietnam, we can point to the obvious refusal of South Vietnam to accept a Diem-Communist coalition."

The Globe

By Marilyn Berger *A-1*

Washington Post Staff Writer

The Boston Globe, the third major newspaper to print articles based on a secret Pentagon report, was enjoined yesterday by a federal judge from publishing further dispatches based on the document until July 1.

In the first such move of its kind, U.S. District Judge Anthony Julian also ordered that the documents be impounded.

The Julian decision appeared to be the most stringent ruling in the three cases now under way involving the Pentagon documents. The New York Times and The Washington Post are also under temporary restraining orders, but none have been granted for so long as in the Boston case.

The Globe issued a statement immediately after the decision. "We don't like this impounding order," said Globe editor Thomas Winship. "We're consulting counsel and we'll have something to say tomorrow."

Winship said The Globe would not hand over the documents at this time.

Julian set a hearing for Friday at 10 A.M. on the restraining order.

The federal government had petitioned for the restraining order after The Globe turned down a telephone request by Attorney General John N. Mitchell to cease publication of the documents.

Winship said earlier in the day that he would honor any injunction issued, although the newspaper was prepared to go to press with several pieces involving both the Kennedy and Johnson administrations. He said The Globe was in possession of a substantial part of the Pentagon report and expected to receive more of it later in the day.

In granting the temporary restraining order, Julian said, "The Court is satisfied that plaintiff's application ... should issue [be granted] pending a hearing ... because it appears reasonable that immediate and irreparable injury will result to the plaintiff and the national security before a hearing can be held on the application for a preliminary injunction."

Julian ordered that "the defendant newspaper, its officers, agents, and employees, deliver to this court forthwith all the aforementioned documents and any copies, excerpts, duplications, or other tangible evidence of such documents to be held by this court pending further order of this court. It is further ordered that the materials so delivered shall be impounded..."

During the hour-long hearing before the Julian decision, the judge asked a lawyer for The Globe, "What harm can come to The Globe if material not published for years were layed a few more days ... to wait until this is thrashed out" in the higher courts?

"No harm, your honor," answered Robert Haydock, Globe attorney, "but it is a matter of principle."

In the course of the hearing, James Gabriel of the Boston office of the Defense Department mentioned the identical cases involving The New York Times and The Washington Post. "If The Globe were allowed to publish," he said, "it would cause irreparable injury to the nation's defense and to the country's judicial system."

"The judicial process is not a defendant in the case," Julian retorted.

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53 JUL 8 1971

Globe Report Tells Of A-Weapon Talks

BOSTON, June 22 (AP) — The Boston Globe printed today what it said were excerpts from a Pentagon study on the Vietnam war. It includes a report on a high-level meeting at which a top U.S. officer demanded that commanders be given the freedom to use

tactical nuclear weapons in Vietnam.

The report said that at a meeting of the Joint Chiefs of Staff in Honolulu in June 1964, Adm. Harry D. Felt, then commander of the Pacific forces, demanded the option to use nuclear weapons "as had been assumed under various plans." There was no mention of the various plans.

In an editorial, the Globe hinted at more documents to come, saying the newspaper "has come into possession of many of the classified Pentagon papers, some already published and some not. It has decided to begin publishing them today as a public service in support of the people's right to know."

Also present at the Joint Chiefs' Honolulu meeting were Defense Secretary Robert S. McNamara; Secretary of State Dean Rusk; Ambassador Henry Cabot Lodge; Gen. Maxwell D. Taylor, Chairman of the Joint Chiefs, and John McCone, director of the Central Intelligence Agency.

The discussion about the use of nuclear weapons in Vietnam arose, the Globe said, on the question of whether the Chinese Communist forces would enter the war.

"Secretary McNamara then went on to say that the possibility of major ground action also led to a series question of having to use nuclear weapons at some point," the Globe quotes the report.

"Admiral Felt responded emphatically that there was no possible way to hold off the Communists on the ground without the use of tactical nuclear weapons and that it was essential that the commanders be given the freedom to use these as had been assumed under the various plans," the report said.

In Honolulu, Felt, now retired, said he did not remember making any demand for use of nuclear weapons.

"I don't remember that a discussion of nuclear weapons ever came up at that meeting," Felt said. "I would have to try to dig into my memory of that June meeting to determine if it was a subject."

Felt said he always doubted that authority would be given to commanders for use of nuclear weapons. "It has always been clear that this final decision would be the commander-in-chief's," the admiral said.

The Globe said discussions included the "desirability of obtaining a congressional resolution prior to wide U.S. action."

"Lodge felt it would not be necessary. But Defense Secretary McNamara, Rusk and CIA director McCone all argued in favor of the resolution," the Globe said.

Other excerpts in the Globe include a report on the 1968 Tet offensive by Gen. Earle G. Wheeler; an early Vietnamization plan by President Johnson as a result of that offensive; and three cables from Gen. Taylor to President Kennedy in which the general recommended the deployment of 8,000 ground combat troops in Vietnam.

The Globe said it was making public for the first time "the role of the Kennedy administration in the escalation of the war."

"As early as May 11, 1961, President Kennedy," the article said, "had approved programs for covert action which had been recommended by a Vietnam Task Force."

"Among these actions were:

"1. Dispatch of agents into North Vietnam.

"2. Aerial resupply of agents in North Vietnam through the use of civilian mercenary air crews.

"3. Infiltration of special South Vietnam forces into southeast Laos to locate and attack Communist bases and lines of communication.

"4. Formulation of 'networks of resistance, covert bases and teams for sabotage and light

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harassment' inside North Vietnam.

"5. Conduct of overflights of North Vietnam for the purpose of dropping leaflets.

"These covert actions, which were approved by President Kennedy, were contained, according to the Pentagon study, in a National Security Action Memorandum number 52."

In a cable sent from the Philippines in October 1961, Gen. Taylor said his recommendation for 8,000 ground troops in Vietnam "without delay offers definitely more advantage than it creates risks and difficulties."

These risks and difficulties were outlined by Taylor:

"1. The strategic reserve of U.S. forces is presently so weak that we can ill afford any detachment of forces to a peripheral area of the Communist bloc where they will be pinned down for an uncertain duration.

"2. Although U.S. prestige is already engaged in SVN (South Vietnam) it will become more so by the sending of troops.

"3. If the first contingent is not enough to accomplish the necessary results, it will be difficult to resist the pressure to reinforce. If the ultimate result is the closing of the frontiers and the cleanup of the insurgents within SVN, there is no limit to our possible commitment unless we attack the source in Hanoi."

"4. The introduction of U.S. forces may increase tensions and risk escalation into a major war in Asia."

"On the other side of the argument," Taylor said, "there can be no action so convincing of U.S. seriousness of purpose and hence so reassuring to the people and the Government of SVN and to our friends and allies in SEA

(Southeast Asia) as the introduction of U.S. forces into SVN."

The Globe said that "President Kennedy stepped up covert actions against North Vietnam and increased the number of advisers to 16,000 men before he was assassinated in November 1963 but he never committed the United States ground unit as Taylor had suggested."

The Globe also said the Pentagon study shows that when "President Johnson announced publicly that he would not run for re-election (March 1968) he was also deciding privately that a policy of Vietnamization was the best one for the nation to follow in the war."

"The President's speech was also a denial of Gen. William C. Westmoreland's request for an additional 206,000 troops," The Globe said.

The Globe said the two months between the Tet of-

fensive and Johnson's speech "are described in the Pentagon study as a time of conflicting counsel coming to the White House and revolving around a request from General William Westmoreland, then U.S. commander in Saigon, for 206,000 additional troops over the \$25,000 ceiling that had previously been put on American forces there.

"The fireworks of the Tet Offensive had, it is clear from the Pentagon studies, shaken Washington's confidence in the eventual outcome of the war and kicked off what the writers describe as a 'reassessment from A to Z,'" The Globe said.

In another excerpt from the Pentagon study, Gen. Earle G. Wheeler, in a report on the Tet offensive, said, "The initial attack nearly succeeded in a dozen places, and defeat in those places was only averted by the timely reaction of U.S. forces. In short, it was a very near thing."



Associated Press

Boston Globe editor Thomas Winship gets report from secretary Kathy Kennedy on calls supporting paper's stand.

TOP CLIPPING
 DATED 6-23-71
 FROM Wash Post
 FILED FILE AND INITIALS

The Times

By George Lardner Jr.

Washington Post Staff Writer

NEW YORK, June 22—The Second Circuit Court of Appeals maintained the ban on The New York Times' articles on the origins of the Vietnam war today as the government pressed what it said "terribly unpopular" bid to suppress them.

The full eight-judge bench heard attorneys for both The Times and the Justice Department this afternoon and then adjourned without reaching a decision.

Chief Judge Henry J. Friendly promised a ruling "very promptly . . . surely within the next few days." Meanwhile, he said, the court's temporary order against publication by The Times of the secret Pentagon history on the Vietnam war would remain in force.

The judges concluded their hearing shortly after 5 p.m. after a secret session with lawyers for both sides.

U.S. Attorney Whitney North Seymour Jr. insisted in open court earlier in the afternoon that the case was important enough to warrant an exception to the First Amendment.

"We realize the government's position is highly unpopular . . . terribly unpopular," Seymour said. "But great constitutional issues are not decided by catchwords like 'freedom of the press' and 'the people's right to know.'"

He said even Thomas Jefferson, a champion of press freedom, expressly recognized that "state secrets" must be guarded by the government against premature disclosure.

The U.S. Attorney acknowledged, however, that not every volume in the thick history contained classified documents and that some might be declassified.

Seymour said Secretary of State William Rogers, Secretary of Defense Melvin R. Laird and Adm. Thomas H. Morrer, chairman of the Joint Chiefs of Staff, were prepared to appoint a joint force for an exhaustive declassification study of the documents in question.

Once completed, Seymour said, the government would withdraw its objection to the publication of any documents which the study has found "no longer relevant to national security." But the chore, he said, would take "a minimum of 45 days."

Asked about the suggestion, Times executive vice president Harding Bancroft told newsmen: "We are not going to make any comment on any of these offers or any part of the case at all."

The lawsuit here was the first of three filed to stop publication of articles based on the 7,000-page Pentagon study.

Classified "Top Secret," the study includes 4,000 pages of government documents.

Despite that, constitutional lawyer Alexander M. Bickel, The Times' chief attorney, said the government had fallen far short of showing the "mortal danger" to national security that he said was plainly required to justify overriding the First Amendment.

Bickel also assailed the government for maintaining that U.S. District Judge Murray I. Gurfein, who ruled in The Times' favor Saturday, left Justice Department prosecutors "no opportunity for a delineated page-by-page discussion" of the 47-volume Pentagon study.

U.S. Attorney Seymour and his aides made the contention in a 34-page brief filed with the appellate court yesterday evening. Bickel recited it again today in open court and then looked at the bench. "That, and I choose the word carefully," he declared, "is a misrepresentation."

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He said the government had plenty of chances at a secret hearing before Judge Gurfein to prove its case forcefully.

Chief Judge Friendly questioned The Times' lawyer sharply, suggesting at one point that Bickel was "quibbling" in refusing to concede that "The Times stole these documents." Bickel protested that there was no evidence of that.

"Why not just say The Times got them without authority?" Friendly suggested.

"I want to get away from the word 'stolen,'" Bickel answered. "They (The Times) could have gotten them from (former Defense Secretary Robert S.) McNamara as far as I know."

"You aren't serious?" Friendly said testily.

"I was simply resisting the word 'stolen,'" Bickel replied.

"Well, let's just say The Times received goods in the process of embezzlement," the judge told him in half-humorous fashion.

From there, Friendly repeatedly challenged Bickel over the newspaper's decision not to consult with government officials about the sensitivity of the documents or about chances of getting them declassified.

"The question is one of law, not of property," Bickel said. Since it is the government that is seeking to block publication, he said, "In our view, the burden is on the government to show the danger to national security . . . This is not a copyright case. This is not a rivers and harbors case . . . This is a First Amendment case."

Seymour called it one "of major national importance" in light of the United States' far-flung commitments, from combat in Southeast Asia, to peace negotiations in the Middle East, to a "war of nerves in Central Europe."

Although Judge Gurfein concluded that the secret account of the war through early 1968 was "merely history," the U.S. attorney maintained: "It was and is much more than that. It contains much that is current."

He said it included "virtually every document that diplomatic and intelligence agencies could muster."

Seymour denied that the "Top Secret" classification accorded the history was simply "a coverup to hide the truth about the war."

Beyond that, he declared, the government's system of classifying documents stood on solid ground and deserves enforcement both under the Executive Branch's inherent powers and under the Espionage Act, which the Justice Department is invoking.

"You mean the mere fact that a government employee puts a stamp on it that says 'Top Secret,' you have a statutory basis for it?" Judge Irving R. Kaufman interjected.

Judge Wilfred Feinberg followed up by alluding to affidavits submitted by The Times calling leaks of classified information commonplace in the nation's capital. None, he noted, ever prompted the government to try to block publication before this.

Seymour said all the samples offered by The Times that he recalled were "one-shot" stories. Bickel indicated to the court later that they included "numerous series." In the face of a "one-shot" story, the U.S. attorney added, the government's only recourse would be a criminal prosecution, a step that "would have been foolhardy in the extreme."

"The one way to tell the world a document is accurate is to prosecute someone for disclosing it," Seymour said.

"Well," Kaufman responded, "then the mistake The New

York Times made here was a not to publish the whole document at once."

Judge Kaufman asked at another point about the government's contention that the courts should respect its classification of various documents "even without a specific showing that the national security will be impaired."

It was in this fashion that the Justice Department secured the temporary court orders prohibiting further articles on the Pentagon papers.

"The classification is presumed to be correct unless it is shown to be arbitrary," Seymour replied. And since the suit was first filed, he maintained, the government has submitted "sufficient documentation" that publication of the war history "plainly imperils the military and foreign affairs of the government."

Judge Gurfein had decided otherwise. He ruled that even with the opportunity for a "no holds barred" presentation at secret hearings, the government established little more than officialdom's embarrassment over the leak.

Seymour charged Judge Gurfein with "an abuse of discretion" for not reading the voluminous documents himself.

The U.S. Attorney also accused newsmen who attended last Friday's open hearing before Judge Gurfein of forming a "virtual cabal." He asserted that some cheered for The Times and hissed at the government. "It was almost like an old-time movie," Seymour complained.

Bickel denounced this as "an astonishing and wholly unwarranted suggestion that the crowd somewhat overbore and rushed the judge. I find that quite unfair."

Instead, The Times lawyer said, Judge Gurfein "asked the government patiently to show him where the shoe pinches, so to speak."

Bickel said the government witnesses could hardly blame others now for their failure. One of them, Dennis Doolin, deputy assistant secretary of defense for international security affairs, had had the same documents on his desk for six months back in 1969, Bickel said, while reviewing a request for their declassification from Senate Foreign Relations Chairman J. William Fulbright (D-Ark.).

Judge Friendly suggested, in light of the government's charges, that perhaps the courts should look at all the documents.

Bickel disagreed. Otherwise, he said, "the First Amendment would depend for its vitality on the volume of what you wished to publish."

The Times has steadily maintained that its articles on the Pentagon study pose no threat to national security. Beyond that, Bickel argued, the threat would have to be very real and imminent, such as the danger in reporting a wartime troop ship movement, to justify a ban on publication.

In addition, The Times' lawyer said in a brief filed with the court, Congress—in passing the Espionage Act of 1917—expressly rejected a provision that would have given the President the power to prohibit publication of information he considered "useful to the enemy."

In that debate, Bickel said, "Sen. Ashurst of Arizona, among others, spoke at length, and with present relevance, on the question of censorship. He said: 'Freedom of the press means nothing except that the citizen is guaranteed that he may publish whatever he sees fit and not be subjected to pains and penalty because he did not consult the censor before doing so.'"

Seymour denied that he had

"in any way insinuated anything" about Judge Gurfein's capability. He asserted that when he was speaking of the "pressures of the press," he was speaking of the pressures

that the government lawyers felt.

ACLU lawyer Norman Dorsen said he was worried that the case would authorize a "pattern of censorship" even

if The Times wins. By granting temporary bans on publication of the Pentagon war study, he said, the courts have invited the government "to test out in federal district

courts all over the country just what the press can print."

Unless the practice is condemned, Dorsen warned, "this case represents a severe defeat for the First Amendment."

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MAY 1964



Rep. Paul ~~X~~ McCloskey, R-Calif., checks office safe which he says contains classified papers he received from Daniel Ellsberg, an MIT associate said to have leaked secret Pentagon material on Vietnam to The New York Times. Rep. McCloskey said he was questioned by the FBI about the documents.

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- The Washington Daily News 7
- The Evening Star (Washington) _____
- The Sunday Star (Washington) _____
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- The New York Times _____
- The Daily World _____
- The New Leader _____
- The Wall Street Journal _____
- The National Observer _____
- People's World _____

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The Post

By Sanford J. Ungar
Washington Post Staff Writer

A federal appeals court yesterday extended indefinitely its ban on publication of a series of articles in The Washington Post based on a secret Pentagon study on the origins of the war in Vietnam.

The U.S. Court of Appeals for the District of Columbia, after a three-hour hearing before its full complement of nine judges, said that the ban would remain in effect until it could weigh the government's contention that the articles are dangerous to national security. It gave no indication when it would rule.

In an unusual development yesterday the U.S. Solicitor General, Erwin N. Griswold, argued the government's case before the appellate court.

He said that "the integrity of the institution of the Presidency" is at stake in the Post case and suggested that if the press is free to publish classified government material, delicate negotiations such as the current Strategic Arms Limitations Talks with the Soviet Union might be endangered.

Griswold said that the Secretary of State, Secretary of Defense, and Joint Chiefs of Staff are willing to "appoint a special task force to expedite reclassification" of the Pentagon study—which is now all under the label "top secret—sensitive"—within 45 days.

Then, the Solicitor General said, the government would withdraw its objection to publication of those parts of the study no longer considered top secret.

But The Post rejected that offer, arguing that to do otherwise would amount to acceptance of the government's intricate classification system. "This is government by hand-out," said attorney William B. Glendon, representing The Post. In that case, he said, "we're back to censorship." "We're not willing to leave it up to them. Where do we go if we don't agree with them?"

In rejecting the government's offer of a compromise solution, Glendon said, "The press must be free to persevere and find the truth the

Judge Harold Leventhal suggested that the government's offer to reclassify the study was "a refutation of (its own) argument that the classification system is conclusive."

One hour of yesterday's hearing before the appeals court was held in secret, at the request of the government. During that time, the judges could be seen through courtroom windows inspecting sealed exhibits from the hearing Monday before Judge Gerhard A. Gesell. Gesell decided at that hearing that the government had failed to prove a case justifying prior restraint on publication.

The two-hour appeals court session open to the public was punctuated with sharp exchanges among the judges themselves and with lawyers from the Justice Department and The Post.

At one point, Judge J. Skelly Wright scolded Griswold for referring to cases decided by the Supreme Court which did not deal with the First Amendment guarantee of freedom of the press.

"The right of the people under the First Amendment has to be respected," Wright said. "You know the First Amendment as well as I do."

In a letter exchange, Wright stressed that "the obligation is on the government" to demonstrate why an injunction should be issued against The Post.

"Well, that's a nice problem—that the obligation is on the government," Griswold replied. "Well, you're asking for the injunction," Wright said.

For the first time yesterday, The Post disclosed in a legal memorandum submitted to the appellate court the extent of the documents from the secret Pentagon study which are in its possession.

The Post said that it has approximately 4,415 pages from the study, which the government says runs to 7,000 pages.

But the newspaper indicated that its executive editor, Benjamin C. Bradlee, "has already been given portions of the materials from two other sources, two other completely distinct sources."

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Citing the fact that The Boston Globe had now joined The New York Times and The Post in printing portions of the Pentagon study and that Rep. Paul N. McCloskey (R-Calif.) had said he would also reveal contents of the papers he has received. The Post argued that "one thing is certain: public revelation of the contents of this controversial report will continue apace, and all of it will soon become available to the American public."

"Despite the continuation of this ill-conceived litigation," the legal memorandum said, "the government's efforts to suppress the truth will ultimately prove futile."

Both in its own legal memorandum and in argument before the appellate court yesterday the government seemed to stress that its main concern was the effect of The Post articles upon American diplomatic relations.

Citing authorities as far back as Presidents George Washington and Thomas Jefferson, the government argued that "the process of negotiation between the United States and other sovereigns necessarily a sensitive one, and often based on information available to the Executive, which by its very nature cannot be and should not be made available to the public."

In his own ruling Monday, Gesell conceded that "publication of the documents in the large may interfere with the ability of the Department of State in the conduct of delicate negotiations now in process or contemplated for the future."

But Gesell had added that "in interpreting the First Amendment, there is no basis upon which the court may adjust it to accommodate the desires of foreign governments dealing with our diplomats."

The U.S. government, however, insisted that Gesell was "erroneous, saying that the lower court judge had failed 'to comprehend the nature of the power of the Executive with respect to the conduct of foreign affairs.'"

In its brief, the government also insisted that courts are not qualified to review a "top

secret" classification which has been made within the Executive Branch.

"The particular classification that material requires for national defense purposes and whether and when that classification should be changed are matters of the highest sensitivity and difficulty, and reflect judgments based on wise knowledge of and familiarity with many interrelated and subtle factors," the government said.

"The courts simply are not equipped to make their own independent judgments on these questions," the government brief said.

Repeatedly, the government referred to the documents in The Post's hands as "having been stolen." At another point, it mentioned "the theft of the volumes (of the study) in their compiled state."

The Post has challenged those descriptions of the documents, saying only that they were made available to the newspaper by private sources. At the risk of revealing those sources, The Post has refused to submit the documents for inspection by any court.

"We didn't steal them and I don't know whether anyone else did," the Post attorney told the appellate court.

Available both to Gesell and the appeals court, however, was a list of exactly what items The Post has obtained.

The Department of Defense has also submitted to the court a list which correlates the Post's material with original page numbers in the full 47-volume Pentagon study entitled "History of U.S. Decision-Making Process on Vietnam Policy." The list was not made available to the public.

Griswold, who was dean of the Harvard Law School before he became Solicitor General, told reporters before the hearing that yesterday was the first time in about 40 years that he had argued a case before a circuit court of appeals.

He was accompanied at yesterday's hearing by Assistant Attorney General Robert C. Mardian, chief of the Internal Security Division at the Justice Department, and several other aides.

"This is a great case, I suppose," Griswold said at the outset of his argument, which lasted almost an hour, "and great cases sometimes make bad law."

Griswold indicated to the appeals court that if its decision is in favor of The Post the government definitely intends to go to the U.S. Supreme Court.

As important as freedom of the press, the Solicitor General said, is the "equally fundamental right of the government to function."

He drew comparisons between the Post case and situations where the copyright laws might be challenged or a memorandum to a judge from his law clerk was released to the press.

When Griswold asked the court whether it might not want to act in the case of a leaked internal memorandum, Wright replied briskly, "I hope not."

The Solicitor General also suggested that, rather than printing articles based on the Pentagon study, The Post could have filed a court action under the Freedom of Information Act to obtain the documents it wanted.

The Post's attorney, Glendon, complained, however, that such a court action would take too long and would not be appropriate under the current circumstances.

In response to a question from Judge Roger Robb, he said, "We think the public is entitled to the news as quickly as they can get it."

If The Post had proceeded under the Freedom of Information Act, Glendon suggested, "I think it is safe to say that we wouldn't get (the documents) that way until the war was over."

In his own argument, also lasting almost an hour, Glendon said "the government has come into court for the first time in the history of our Republic and said, 'stop the presses.'"

Referring to Gesell's decision and a parallel one in New York by U.S. District Court Judge Murray I. Gur-

fein in a case involving The York Times, he said, "The government has now had two times at bat. It failed in New York with the same witnesses" as in Washington.

"It's time that the presses were allowed to roll again," Glendon said.

He rejected the suggestion by Judge George E. Mackinnon that the government's position, in offering to reclassify part of the Pentagon study, "is realistic."

Glendon contended that "the government has become a prisoner of its own (classification) system."

He complained that, under the government's restrictions, he had to submit a supplementary "secret brief," which was written in the presence of government security agents.

If there have been problems over the years with the compromise of secret government information, Glendon said,

that is "the price you pay for a free press."

That theme was also followed in the ten-minute argument of Rep. Bob Eckhart (D-Tex.), appearing as amicus curiae on behalf of himself and 26 other congressmen.

He insisted that the material in the Pentagon study is "extremely pertinent" to legislation regarding the war in Vietnam pending before both houses of Congress.

Eckhart argued that "the overwhelming public interest" lies in "the right to free speech without prior restraint."

Questioned by MacKinnon, himself a former congressman from Minnesota, Eckhart said that if someone leaked material from a secret session of the Senate, he "might have to pay the price of violating a rule imposed upon him," but could not be subject to prior restraint.

The hearing by all nine judges of the court of appeals here was arranged with unusual speed, after the government appealed Gesell's decision on Monday night.

One of the issues to be resolved, as framed by Chief Judge David L. Bazelon during the argument, is "whether the Executive (branch of government) has unbridled discretion" with regard to documents that it has classified.

The only judge who posed no questions and made no comment during the two-hour open court session yesterday was Spottswood W. Robinson 3d, who voted with Robb during a midnight session last Friday to reverse Gessel's initial decision that The Post could publish its series.

It was Robb and Robinson's order that required Gesell to hold a full evidentiary hearing on the Post case Monday. Wright, the third member of the emergency appellate panel that heard the case Friday night, dissented from their decision.

The Post had printed two articles in its series before the Appeals Court issued its restraining order.

In the first installment, correspondent Chalmers M. Roberts outlined the American position during the Eisenhower administration on the question of elections to be held in Vietnam after the Geneva Conference of 1954.

The second article, by Murrey Marder, described the repeated American halts in the bombing of North Vietnam during the Johnson administration as having been intended to influence American public opinion and extract concessions from the North Vietnamese.



By Ellsworth Davis—The Washington Post

Kevin T. Maroney, Justice Department attorney, left, and Solicitor General Erwin

N. Griswold leave courthouse after arguing government's case against The Post.

Secrecy Rule Review Was Sought by Nixon

By Michael Getler
Washington Post Staff Writer

Early this year, President Nixon ordered a top-level review of all government procedures for classifying documents, the White House revealed yesterday.

Presidential press secretary Ronald L. Ziegler said that ordinarily such presidential directives to the National Security Council — the government's top security advisory body — are not made public. But, he said, public interest in the current fight over publication of the top secret Pentagon study of the Vietnam war now made the disclosure of the President's move on Jan. 15 appropriate.

Ziegler said the presidential directive called for broader and speedier declassification procedures and for a continuing review of the process.

Ziegler said the purpose was to enlarge the American people's right to know by making more information available to the public not less.

Ziegler said that Defense Secretary Melvin R. Laird was following the President's directive yesterday when he spoke on Capitol Hill about the Pentagon study.

Laird, earlier yesterday, told newsmen he had ordered Pentagon censors to speed up work on declassifying as much of the controversial Vietnam war papers as possible.

Laird — not mentioning the White House directive — indicated that his move was prompted by disclosure of portions of the top secret papers in three newspapers.

But the defense chief did not say how much of the 47-volume study the Pentagon would eventually release or whether it would declassify any of those portions which have not yet appeared in the press.

During a recess in his appearance before a Senate Appropriations subcommittee, Laird said "I believe that because there have been certain papers that have been stolen, and certain drafts of these documents, that it is necessary for us to move as rapidly as possible with the classification review ... and move forward with declassification as rapidly as we possibly can."

Other Pentagon sources estimated that because so many documents have been stolen and are already in the hands of the press and some Congressmen that it was likely that more documents than those already published would eventually be declassified and released.

Laird estimated that the review process could probably be completed in 90 days. But in courts in both New York and Washington where the case is being tried, U.S. attorneys said that the government "is prepared to appoint a joint task force for an expedited study" within 45 days to determine how much could be declassified.

Pentagon regulations require that if classified documents appear in the public media, their classification

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must immediately be reviewed. The regulations state that "such disclosures require immediate reevaluation of the information to determine whether the publication has so compromised the information that downgrading or declassification is warranted."

Laird said he would also meet today with members of the Senate Foreign Relations committee and other congressmen and senators who have demanded that the Pentagon release the study either publicly or in a classified version to Congress.

Laird did not indicate, however, that he would now supply copies of the study to Congress, an action which he consistently refused to take before The New York Times began publishing portions of the documents on June 13.

As a result, two Congressmen, Rep. John E. Moss (D-Calif.) and Rep. Ogden Reid (R-N.Y.), said they would file suit in Federal District court here today to force Laird to release the study.

Laird said he expected the battle over publication of the documents in The Times, The Washington Post and The Boston Globe to continue in the courts — as well as possible criminal action against the person or persons who leaked them to the press—regardless of any eventual official moves to take the top secret label from what Laird now calls "The McNamara Papers."

Zeigler also told newsmen the government now understands that the documents in

possession of The Times may not represent the final or complete study and that some of

the documents in the paper's possession may have been preliminary documents or

partial drafts. Laird referred to "drafts" as being among the documents stolen.



MELVIN R. LAIRD
pledges classification review



By Bob Burchette—The Washington Post

Adm. Thomas H. Moorer, chairman of the Joint Chiefs of Staff, pours glass of water for his boss, Defense Secre-

tary Melvin Laird, while Gen. Robert H. Warren, right, testifies before the Senate Appropriations Committee.

NIXON APPOINTED FIVE

17 judges wrestle secrecy issue

By TED Knap

Scripps-Howard Staff Writer

President Nixon named five of the 17 U.S. appellate judges who are hearing the government's pleas to keep The New York Times and Washington Post from publishing more of the secret Pentagon history of the Vietnam war.

Presidents Lyndon Johnson and John Kennedy each named four, President Dwight Eisenhower nominated three, and one was chosen by President Harry Truman.

The nine judges on the U.S. Court of Appeals for the District of Columbia who heard arguments in the Post case yesterday are, in order of seniority:

Chief Judge David Bazelon, 61, a Truman appointee often criticized and occasionally praised for rulings that favored the civil liberties of defendants over arrest powers of police.

J. Skelly Wright, 60, a southern Democrat who ordered the busing of black and white children to achieve more racial balance in D.C. schools. Named by Mr. Kennedy.

Carl McGowan, 60, former Chicago lawyer who was administrative assistant to the late Gov. Adlai Stevenson and then an aide in his presidential campaigns. Nominated by Mr. Kennedy.

Edward Tamm, 65, who was with the FBI 18 years before being named U.S. district judge in 1948. He was promoted to the circuit bench by Mr. Johnson.

Harold Leventhal, 56, who topped his class at Columbia Law School and served on the staff at the Nuremberg war crimes trials. Named by Mr. Johnson in 1965, he wrote a 2-1 majority opinion in 1968 that the government can fire an employee for exercising free speech when it can be reasonably concluded that the speech will lead to chaotic conditions in the government.

Spottswood Robinson III, 55, a black, former member of the U.S. Civil Rights Commission and dean of Howard University Law School here. Named by Mr. Johnson.

George Mackinnon, 65, a fellow freshman member of Congress with Mr. Nixon in 1946, later Republican nominee for governor of Minnesota and most recently counsel for six mutual funds. Named by Mr. Nixon.

Roger Robb, 63, who as a lawyer defended Otto Otepka on charges by Secretary of State Dean Rusk that he leaked secret documents to

the Senate Internal Security subcommittee. Earlier, Judge Robb was counsel to the Atomic Energy Commission during the proceedings that led to declaring physicist J. Robert Oppenheimer a security risk. Named by Mr. Nixon.

Malcolm Wilkey, 52, a former Tennessean who, as assistant attorney general during the Eisenhower administration, was in charge of legal strategy in the integration of Little Rock, Ark., schools and later led a rackets busting drive. Named by Mr. Nixon.

The eight judges of the second U.S. Circuit Court of Appeals who heard arguments in The Times case in New York yesterday are:

Chief Judge Edward Lumbard, 70, a Republican friend of the late Gov. Thomas Dewey, appointed by Gen. Eisenhower. Judge Lumbard has long advocated laws allowing police to wiretap under court supervision in criminal investigations.

Henry Friendly, 67, who proposed a constitutional amendment to reverse Miranda and other liberal Supreme Court decisions on criminal law. Named by Gen. Eisenhower.

Joseph Smith, 67, former congressman and U.S. district judge in Connecticut, named by Gen. Eisenhower.

Irving Kaufman, 60, who imposed the first peacetime death sentence for espionage in U.S. history on atom spies Ethel and Julius Rosenberg. Named by Mr. Kennedy.

Paul Hays, 68, former New York state chairman of the Liberal party. Named by Mr. Kennedy.

Wilfred Feinberg, 51, New York Democrat and former U.S. district judge, named by Mr. Johnson.

James Oakes, 47, former attorney general of Vermont, nominated by Mr. Nixon.

Walter Mansfield, 59, former Wall Street lawyer and U.S. district judge, named by Mr. Nixon.

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Ernest B. Furgurson

We're all in it



AT the vortex of the swirling controversy over publication of secret Pentagon records on Vietnam is the man who ordered assembly of the records in the first place. But, like very few others involved, he is not being heard in reaction.

Since Robert McNamara departed the Pentagon in 1968 he has become to Washington political and governmental circles what Howard Hughes is in the world of Hollywood and high finance — a virtual recluse.

Immediately on leaving office, he fled to Aspen, Colo., to ski for a month. As head of the World Bank, he has spoken with occasional eloquence about the dangers of world overpopulation and the duty of the industrial nations to aid the poorer ones. But what he says usually winds up somewhere back in the business pages, instead of out on page one. And he clearly wants it that way. He is a man trying to bury his past.

The picture of him that flickers back into the public's mind first remains that of the human computer with slicked-down hair, the self-assured proponent of military flexibility who muscled into practice theories that earlier secretaries had never been able to move beyond the position-paper stage.

Most of us forget the tears he shed in public when he watched the carrier John F. Kennedy move down the waves, and when he heard Lyndon Johnson's words of praise at departure ceremonies in his own honor. But it is clear now that some of those tears followed the hardheaded earlier performances almost as effect follows cause, and in sequence his current reticence seems just as understandable.

THE first document run by the New York Times in its massive disclosure of the Pentagon archives is a McNamara report to Mr. Johnson on his return from Saigon in December, 1963. In it the secretary notes that "plans for covert action into North Vietnam were prepared as we had requested and were an excellent job." In March, 1964, it was Mr. McNamara who laid down the idea of "retaliatory actions" and "graduated overt military pressure" against North Vietnam. The implication is that these were germinal contributions to the strategy of escalation, and they were.

But his readiness to move into Vietnam far predated the records last week. The best account of his personal role in the buildup and letdown is now at hand in Henry L. Bretwhitt's forthcoming book, "McNamara: His Ordeal in the Pentagon" (Harper & Row), which by convenient accidental timing is to be released as the furor over the escalation record is at its height.

LARGELY overlooked in the rush by media and politicians to point the finger of blame for what happened in the past decade, there hovers the fact that John Kennedy and Robert McNamara both linked what was happening in Vietnam more closely than hindsight allows to Nikita Khrushchev's 1961 pledge of backing for "wars of national liberation" everywhere. They saw Vietnam thus as a direct challenge, a test of American response to that threat from Moscow.

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It also appeared to Mr. McNamara to be a "direct test for the doctrine of flexible response at the lower end of the spectrum," in Mr. Trehwitt's words. This was the doctrine he had forced thru against the advocates of reliance on the big bomb alone, and because he was its apostle he had to take the test more personally than others. He was not alone in

assuming back then that the response would be exercised merely "at the lower end of the spectrum."

So, as early as 1961-1962, "For better or worse — and in the end to his own anguish — he became the dominant public figure on Vietnamese policy beneath the two Presidents he served." Mr. Trehwitt points out that Dean Rusk, who later became the villain to many critics of the war, in fact bowed in this field to Mr. McNamara because he considered Vietnam more a military than a diplomatic problem.

But the thrust of this column and of Mr. Trehwitt's meticulous book is not to make a villain of Mr. McNamara. It is to make clear, for example by reminding of Mr. McNamara's eventual remorse, that the Vietnam venture was undertaken by men of genuine conviction — accompanied by genuine innocence at the outset of how sticky the morass could become.

The fact that they were proved wrong by events they could not foresee does not make them evil men. To try to cast them in that light on the basis of current disclosures is to do very much what the Red hunters in Washington did in the early '50s in their attempts to blame the fall of China on individual Americans. To do that, then or now, is to ignore the reality that we all got into this together.



William Raspberry

Danger of a Precedent

CYNICS ARE suggesting that the administration's heart is not in its efforts to stop The New York Times and The Washington Post from continuing publication of the secret Pentagon study on the Vietnam war.

The reasoning is that since the revelations are primarily an embarrassment to the preceding Democratic administrations, the Nixon people are privately delighted. Some people even suspected initially that the documents had been leaked by Nixon administration sources.

Well, it's an interesting notion, but hardly more than that. The Post apparently takes the Justice Department's action with deadly seriousness; it has had a half-dozen lawyers working on the case around the clock.

I take it seriously, too, for the simple reason that this administration cannot afford to stand passively by while such an important precedent is being set. President Nixon, that is to say, cannot afford the danger that his own administration's secrets may someday become public knowledge.

The specific reference is to the President's public utterances on troop withdrawal and the prisoner-of-war issue. I don't know whether there are secret papers around that give the real reasons for his adamancy on the POW question, but I do know that his public reasons will not wash.

HE HAS TOLD us, for instance, that as long as there are American POWs in North Vietnam, the U.S. will keep a "residual force" in South Vietnam.

And when it was suggested that a way out of this bind might be to set a date for total American withdrawal contingent upon the release of the POWs prior to the withdrawal date, he turned thumbs down.

Now, why?

The public reasons make even less sense than the Johnson administration's public reasons for the bombing, bombing halts, escalation and the rest.

What Mr. Nixon seemed to be saying was that a "residual force" could somehow accomplish what the present forces cannot accomplish now—release of the prisoners.

He explained his refusal to set a withdrawal date, even a date contingent upon the release in the meanwhile of all prisoners, this way:

"Once you set a date, in other words, when we say in effect to the enemy, 'We quit, regardless of what you do,' then we destroy any incentive the enemy might have to negotiate . . . Even

more important, once we set a date we give the enemy the information it needs to launch attacks on our rapidly diminishing forces at their point of vulnerability."

HIS PUBLIC explanation notwithstanding, the President surely must understand the difference between (1) simply announcing a withdrawal date and (2) telling Hanoi we will get our troops out by the end of the year if you release all our POWs by the end of July.

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He must also understand that withdrawal, whether by clear-cut announcement or by his present plans of gradual reduction of American forces, will inevitably lead to a time when America's "diminishing forces (will be) at their point of vulnerability."

If he understands these things, it seems to me fair to conclude that for all his talk on the subject, the POW question is just a smoke-screen, an emotion-charged issue designed to make the American public accept the deployment of at least several thousand U.S. troops in Vietnam for a very long time to come.

It requires no extraordinary imagination to envision a day when some disillusioned bureaucrat will leak documents showing that what Mr. Nixon really had in mind was not the release of American POWs but a way to justify the continued presence of American soldiers in Vietnam.

Things that seem totally illogical when viewed from the perspective of the President's explanations make a good deal more sense if one assumes that his real reasoning is something like this:

I have no intention of bringing all the boys home, just enough to cut the ground from under the dissenters back home. But too many Americans want an end to our involvement in Vietnam for me to say that publicly. What kind of excuse could I give for maintaining troops in Vietnam that American people would buy?

If that in fact were the question, the POWs must have seemed a pretty fair answer.

Courts Continue Post, Times Ban; Globe Restrained

A-1
The courtroom struggle over publication of a secret Pentagon study on the Vietnam war broadened yesterday.

Two federal courts of appeal, with all judges sitting, continued to enjoin The Washington Post and the New York Times from publishing articles based on the papers' copies of the documents.

A new order, issued by a federal district judge, enjoined a third paper, the Boston Globe, from printing further articles on the study. Yet a fourth paper, the Chicago Sun-Times, ran an article in some of its Wednesday morning editions, which it said came in part from the same Pentagon study.

Meanwhile, the White House disclosed that President Nixon on Jan. 15 had ordered a review of classification of

documents in a directive to the National Security Council. And Defense Secretary Melvin R. Laird ordered Pentagon censors to step up the review process on the papers in question—"History of U.S. Decision-Making Process on Vietnam Policy."

On Capitol Hill, the Freedom of Information Subcommittee of the House Government Operations Committee opens hearings today on the questions of government secrecy, classification procedures for government documents and on executive privilege.

Secretary Laird was also scheduled to meet with several chairmen of committees on both sides of the Hill who have asked the Defense Department to supply copies of the Pentagon's study.

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WASHINGTON CLOSE-UP

The Effort to Make History Illegal

By FRANK GETLEIN

Within hours after the New York Times published the first and most shattering installment of the Pentagon papers, detailing, from the prime sources, the lies and deceptions which brought us in full force into the Vietnam war, Defense Secretary Melvin R. Laird appeared on the CBS program, "Face the Nation," to announce as a proud achievement that his Defense Department had succeeded in moving the attention of the American people from the dull old past of how we got into the war to Vietnamization and even to the prospects "beyond Vietnam."

★

By the next day, the Times had succeeded in switching universal American attention back again to the question of how we got into the war.

Laird, for his part, got the Justice Department to attempt to cut off further publication of the papers, and told the Senate that he would not give it even such information as already had been published.

Either from a failure of imagination or from a sudden attack of common sense, neither Laird nor his colleague, Atty. Gen. John Mitchell, has attempted so far to get a court order prohibiting Americans from remembering what they have read of the sorry record, but that may be the next step.

But the Defense secretary's attitude toward the past is more interesting than his and Mitchell's efforts to exercise prior censorship over an American newspaper.

It is no part of proper political comment to remark upon the physical appearance of a public official, but there is a melancholy appropriateness in the undoubted fact that in certain lights and seen from certain angles — both of which ob-

tained more than once on the "Face the Nation" show — Laird's head does resemble the cartoonist's image of the nuclear bomb personified.

For his expressed attitude toward the history of our troubles — "Forget it!" — is precisely the attitude of the mindless self-generating military force that is ultimately responsible for the debacle in Vietnam.

It is true that numerous dignitaries of the Johnson and Kennedy administrations have turned out to be liars and that they specifically lied in order to enlarge the war.

But the war itself, as a cause, was the reason behind their lies, the imposed motive for their systematic deception of the American people on an issue of major importance.

The force symbolized in that bomb with the smiling face has proposed military answers to all conceivable problems in foreign policy, and that is the reason that Lyndon B. Johnson, McNamara, the Bundys and so many others engaged in lying as policy.

★

That force, adopted by the liars, has proved after all to be inadequate in Vietnam. We have bombed and bombed and the enemy has continued to fight.

We have created "democratic" government after "democratic" government and the cause of "freedom" is no better off.

The most disillusioning thing about force is that it has failed.

No wonder the bomb, shyly smiling, urges Americans to forget about the past and concentrate on the rosy future of an imaginary South Vietnamese republic strongly anti-Communist and reliably allied with us to keep the

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North Vietnamese from invading California.

To examine the history of our Vietnamese involvement is not only to discover that Johnson & Co. were a pack of liars. It is also to discover that force doesn't work. Therefore, the advocates of force in the Pentagon and elsewhere are impelled to turn people's attention away from that history, to make its perusal illegal.

In this endeavor, force finds President Nixon's officials as cooperative as ever it found Johnson's.



Numerous officials, starting with the President, have expressed the fear that the end of the war will savagely divide the country with "recriminations" about who "lost" Vietnam. This would seem to lend a slightly legitimate purpose to Laird's protective obscurantism, but it is very slight indeed.

The first question in any such recrimination must be: Who told us Vietnam was ours to lose?

Further questions will show that there is plenty of responsibility for all, from those who are now revealed as liars to many others, with good intentions, who simply shied away from the problem of how to control our military power.

For reasons of a complexity beyond the grasp of mindless force, there are situations today in Latin America, in Africa and in Asia that could easily develop into Che Guevara's malevolent dream of "other Vietnams, many Vietnams." To avoid such a nightmare, we must not, with Laird, ignore the past, but must rather study the sad history of the only Vietnam we

"Follow That Car — And That One — And
That One —"



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DAVID LAWRENCE

War Study Should Be Denounced

All over the world they are talking about what is being called the "Pentagon study." It is being regarded generally as an authoritative document—even though it isn't at all comprehensive, and in many respects isn't even authentic. Yet newspapers here and in European countries are commenting on it as if it were telling the "inside" story of how the United States fumbled the ball in its efforts to handle the Vietnam problem.

But the men who are out of high office today—those who served in the Kennedy administration and in the Johnson administration—as well as those who are officials of the Nixon administration know that the problem wasn't as simple as some of the researchers and critics are trying to make it appear. For unquestionably one of the consequences will be a prolongation of the war.

The Hanoi government, for instance, after reading the comments in the American press, will be led to conclude that there is no need to make any concessions to the U.S. government at the peace negotiations in Paris or to reduce military efforts in the months ahead when American troop withdrawals will approach the final stages.

The major question is whether the Communists have been helped, directly or indirectly, through the influence upon American public opinion by the publication of the incomplete and perhaps misleading study.

This has tended to disparage the American government—its sincerity and its integrity—and to give the impression

that the United States had only a sinister purpose in entering and continuing the war in Vietnam. The noble and honorable objectives of saving a small nation from being crushed by Communist dictatorship now is being brushed aside as inconsequential.

Even in this country, the idea of furnishing help to the weak nations in other parts of the world is considered by some persons as something to be avoided.

Yet, as one looks back to the days before World War I and before World War II, when isolationists used the same arguments and America was regarded as unwilling to give assistance to any of the free countries abroad, there was hardly any credence given to the suggestion that a world war might prove to be the ill-fated result of it all.

Today, when both Red China and the Soviet Union possess nuclear weapons and the United States is pledged to protect its allies in Europe and Asia, there has again been a decided shift in public opinion in America toward isolationism.

The anti-Vietnam war agitators have convinced many people — perhaps even a majority — that the United States had no business getting into the Vietnam war and should pull out at once, even though this amounts to a surrender.

Some of the editorials in European papers indicate a belief on the part of foreign peoples and governments that the United States will have a difficult time coming to the aid of its allies if they should be threatened with an attack.

The Vietnam war by itself may not seem to be of any

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importance in world affairs. Many people don't know exactly where the country is on the map. But the nations of Asia know that the Soviet Union and Red China have been supplying billions of dollars in munitions and equipment to the North Vietnamese.

Supposedly, progress is being made in talks with the Soviet Union about limitation of armaments. But in an atmosphere in which the U.S. government is made to appear weak and irresolute and presumably ready to throw in the sponge, it is hard to believe that the Russians will make concessions leading to any international agreements on the restriction on strategic arms.

The publication of the Pentagon study has done a great deal of harm. Any document that leaves the impression that the Government of the United States has engaged in deception, any incomplete research that persuades the people that their elected officials are not conscientious and are merely concerned with political games is bound to swing public opinion away from them.

The printing of the Pentagon study has been a piece of bad publicity for the American government. It is unfortunate that some of the top men in the Johnson and Nixon administrations have not denounced it in vigorous terms.

The American people should be told that the U.S. government has been endeavoring to perform a real service in Southeast Asia — and intends to continue to aid the cause of small nations who may be subjected any day to aggression by the Communists.

Government itself plants stories

Post affidavits attest to the value of news leaks

REC-15

By JOSEPH VOLZ

It is no secret that a reporter covering government can't get by in Washington without regularly printing classified information.

That was the intention yesterday of several

Washington Post editors and reporters' trying to convince U.S. District Court Judge Gerhard Gesell that publication of official secrets is nothing new.

Affidavits filed with Judge Gesell by Post newsmen gave the impression that the government constantly tries to seduce the Post into publishing portions of classified information which puts the administration — any administration — in good light.

Murray Marder, veteran Post diplomatic correspondent, said "No competent reporting on diplomatic, military or related affairs is possible without some form of officially sanctioned, but rarely officially admitted, access to what is labeled as confidential secret or top secret information.

Mr. Marder said a 1965 story he wrote on the controversial landing of American troops in the Dominican Republic was "based in considerable part on government cables which were highly classified and still, as far as I know, remain classified."

RED INK

Post Executive editor Benjamin C. Bradlee, a slender energetic man who splashed up the front of his jacket with blood-colored ink during today's battle with Justice Department lawyers, not only received highly classified information as a newsman but leaked some himself when he was in government.

Mr. Bradlee said President Kennedy, "once read portions to me of a highly classified memorandum of conversation between him and Nikita Khrushchev in Vienna in 1961. I received his permission to use this material, which is still highly classified."

The Post editor, who was working for Newsweek at the time said, "The President's stated purpose was to convince the American public that the Soviet Union was taking an extremely belligerent line on Berlin."

And Mr. Bradlee confessed: "When I was a member of the foreign service of the U.S. in Paris in 1952 I myself was instructed by a superior to leak the contents of a secret cable dealing with a Soviet note to the American government. And I did so to a correspondent of the United Press."

Post reporters defended their publication of

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volunteered classified info by saying they tried to balance it with other classified info not volunteered by the government.

Some of the newsmen covering the Post case here were concerned that they hadn't received their share of secrets. One reporter, who regularly covers the Pentagon for a major paper, said, only half kidding: "I stopped Mel Laird in the hall the other day and asked when he was going to leak something to me. He didn't think that was funny."

PRESS CONFERENCE

Mr. Bradlee, holding a impromptu press conference, contended the Post and the New York Times, which first printed the Pentagon papers, might have avoided a confrontation with the government if a story a day had been printed "without flashing mirrors and sending up flares."

Judge Gesell, in refusing to issue a ban, said: "No one can measure the effect of even momentary delay" in running the story.

But Mr. Bradlee, who argued the public had the right to know, didn't want the readers to find out too fast. He was not anxious to move the story over the Post Syndicate wire until the presses rolled at his own newspaper five hours after Judge Gesell gave the go ahead. Mr. Bradlee feared the Post would have scooped itself and other newspapers would have rushed into print first. The whole matter became academic long before presstime when Judge Gesell was overruled by appellate judges.

PICKETS

Meanwhile in front of the courthouse a handful of young men carried signs reading "We believe the Washington Post is deceiving the American public." The head picketer, John Vecchione of New York, who said he represented the National Student Coordinating Committee for Freedom in Viet Nam, complained that the newspaper had run articles on the Eisenhower and Johnson years but skipped the Kennedy administration.

Kurland: Bounds of Freedom

By PHILIP B. KURLAND

CHICAGO—Anyone with the self-righteousness of a Melvin Laird or a Tom Wicker has little difficulty determining the proper outcome of the present controversy between the Government and The New York Times. But certitude is only an anagram of and not a synonym for rectitude. The respective battle cries of "free speech" and "national security" frame the question; they do not answer it.

What is demonstrated by the newspaper's desire to publish and the Government's desire to censor the Pentagon history of the early years of American involvement in Vietnam is a conflict between these two primary values of a democratic society. They are both primary because the kind of society to which we aspire cannot survive without the freedom to reveal facts and express ideas any more than it can survive without freedom from restraint of domestic and foreign enemies who would subvert the form of government that is the guarantor of free speech.

Except for the doctrinaires, some of whom occupy important places in the Fourth Estate no less than in the three branches of the national Government, neither freedom of speech nor protection of national security is an absolute. The Constitution has never been authoritatively construed to mean that all expression by sound or writing must be free from constraint. Some libel—not much—is still actionable. Criminal sanctions are still imposed on those who incite to crime and violence by words. Contracts are still enforced. The right to speech is limited as to time, place, and manner. Words have consequences and responsibility for those consequences is often affixed by the law.

At the same time, national security has not been permitted to mean that the Government has the right to suppress all risks by whatever means. Persons in so-called sensitive jobs can be removed only by conforming to the procedures that the Constitution commands; suspicious persons cannot be subjected to preventive detention, except in Washington, D. C.; the privilege against self-incrimination and the other protections of the Bill of Rights are available even to those

The conflict over the official Vietnam history, however, does invoke a free-speech principle heretofore regarded as absolute. The principle, derived from English experience and law, is that the press may not be subjected to "prior restraint." Whatever degree of punishment might be imposed on the press for publishing what it should not publish, publication cannot be prevented. This is historically the essence of the First Amendment as it was framed; all additional limitations are later growths. But that absolute, tested against criminal libel and slander in the famous case of Near vs. Minnesota, has never been weighed against a claim of national security.

I expect that, if a clear and major and imminent danger to national security would result from a given publication, the Constitution will be read to permit restraint by injunction. Certainly this would be true in time of declared and total war. It is harder to imagine such a breach of security in times of peace or limited, undeclared war.

Even if we assume, however, that "national security" is a valid reason for restraint of the press, the question remains who is to determine whether a threat to the national security exists. It seems clear enough that those who indiscriminately stamp documents as "confidential," "secret," or "top secret," cannot be the judges of their own judgments. They are more likely to cover blunder and stupidity, embarrassment and fabrication, than information harmful to national security.

It would seem that if the judicial process is sought to be used to restrain publication the judgment as to the seriousness of any threat to national security must be the court's.

The Vietnam war has done more to rend the fabric of American society than any crisis in our history, except perhaps only the Civil War. It is unfortunate that to the intolerable burden is now added a serious threat to the press's freedom. It would be a mistake to treat this issue as of the same importance as the exchange of vilifications between the news media

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and the present Administration. That is a contest of small intrinsic importance. The immediate question is of vital importance to the future of American democracy, for it clearly tests our commitment to two primary values: the security of the nation and the freedom of its people.

Philip B. Kurland is professor of law at the University of Chicago and author of "Politics, the Constitution, and the Warren Court."

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Who Elected The Times?

By JAMES RESTON 43

The public reaction to the publication of the Pentagon Papers has been overwhelmingly on the side of the newspapers, but there is a strong and vehement view that it is wrong, dangerous and even criminal for a newspaper to assume responsibility for publishing private official documents without the consent of the Government.

Who, it is asked, elected The New York Times? How can outsiders judge better than the official insiders what damage may be done by publication of secret documents? By what right do newspapers presume to print official information which may embarrass the Government and give comfort to the enemy?

These are serious questions which deserve serious answers, for it is clear that the publication of the Pentagon Papers has embarrassed the Government, disclosed evidence of official deception, and in the process provided Hanoi, Moscow and Peking with material for anti-American propaganda.

At first glance, it is a devastating indictment, but should documents not be published because they embarrass the Government? Nobody is arguing that newspapers have the right to publish the nation's war plans or troop movements, or anything else that would endanger the lives of the men in the American expeditionary force, but historical documents? Evidence that the Congress and the people were misled years ago—even if this embarrasses the Government and provides propaganda for the enemy? This is clearly another matter.

After all, every time Mike Mansfield, the opposition leader in the Senate, calls on the Government to end the war by a date certain, or any newspaper or preacher or group of citizens condemns the bombing, or questions the loss of life or the diversion of resources, or what the war is doing to divide and weaken the nation—all this is picked up by our adversaries and used against the United States.

Should we then suppress the documents because they "embarrass" the Government? Deceive the people about the record of the war? Submit to the Government's argument that publication will cause "irreparable injury" to the national defense rather than "irreparable injury" to the nation's reputation for candor and plain and honest speaking to the Congress and the people? Confuse "embarrassment" to the Government and its officials with the security of the Republic?

In the absence of clear evidence that publication of these old documents is truly a threat to the defenses of the nation—which the Government has not provided—these are good political but bad philosophical and historical questions. Still, they are being raised by influential men and they come closer

to the Marxist view of the press—that it should be a servant of the government—than to the American view of the press as defined in the First Amendment.

facts relating to the past, as distinguished from dangerous military information affecting the present or future on the ground that this may be awkward. This comes close to Nikolai Lenin's view of the press.

"Why should freedom of speech and freedom of press be allowed?" he asked in 1920. "Why should a government which is doing what it believes to be right allow itself to be criticized? It would not allow opposition by lethal weapons. Ideas are much more lethal than guns. Why should any man be allowed to buy a printing press and disseminate pernicious opinions calculated to embarrass the government?"

Well, many men who oppose publication of the Pentagon Papers don't go this far, but the violent opponents of publication, like Herbert Rainwater, the national commander of the Veterans of Foreign Wars, who is crying "treason," come very close to the Lenin thesis that opposition to the Government is unpatriotic or worse.

It is true that newspaper editors, raised in the American tradition of "publish and be damned," do not always know what damage they may do to the diplomatic process by publishing official documents. Their information is limited, and no doubt the official insiders know more than the outsiders, but even this is a dubious argument.

As Walter Lippmann wrote many years ago, you had better be careful not to go too far with the "insiders" argument. "For if you go on," he told the National Press Club in Washington on his 70th birthday in 1960, "you will be showing how ridiculous it is that we live in a republic under a democratic system, and that anyone should be allowed to vote.

"You will be denouncing the principle of democracy itself, which asserts that the outsiders shall be sovereign over the insiders. For you will be showing that the people since they are ignoramuses, because they are outsiders, are therefore incapable of governing themselves.

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"If the country is to be governed with the consent of the governed, then the governed must arrive at opinions about what their governors want them to consent to. . . . Here we correspondents perform an essential service. In some field of interest, we make it our business to find out what is going on under the surface and beyond the horizon . . .

"In this we do what every sovereign citizen is supposed to do, but has not the time or the interest to do for himself. This is our job. It is no mean calling. We have a right to be proud of it, and to be glad that it is our work."

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UPI-50

ADD 1 VIET REPORTS, WASHINGTON (UPI-53)

DEFENSE DEPARTMENT SPOKESMAN JERRY FRIEDHEIM SAID, HOWEVER, "WE WILL UNDERTAKE A STUDY EXPEDITIOUSLY," AND ESTIMATED IT WOULD TAKE 90 DAYS TO COMPLETE IT.

HE SAID THIS WOULD INVOLVE REMOVING THE PENTAGON PAPERS OUT OF THE NORMAL DECLASSIFICATION REVIEW CHAIN AND HANDLING THEM SEPARATELY. BUT HE SAID PAPERS FROM OTHER AGENCIES, SUCH AS THE STATE DEPARTMENT, CONSTITUTE "A SIGNIFICANT" PART OF THE WAR STUDY AND CANNOT BE DECLASSIFIED BY THE PENTAGON. THESE, HE SAID, WILL BE TURNED OVER TO THE OTHER AGENCIES INVOLVED.

THE STUDY DREW FROM MATERIAL SUPPLIED BY THE PENTAGON, THE CIA, AND STATE DEPARTMENT CABLES AND MEMORANDA. TM

AND STATE DEPARTMENT CABLES AND MEMORANDA. THE RESEARCHERS, HOWEVER, WERE BARRED FROM THE WHITE HOUSE FILES.

PENTAGON SOURCES SAID AS A PRACTICAL MATTER THE DECLASSIFICATION IS LIKELY TO MAKE PUBLIC ONLY THOSE PORTIONS OF THE PENTAGON PAPERS THAT ALREADY HAVE BEEN PRINTED IN THE NEWSPAPERS. SECTIONS THAT DID NOT APPEAR IN THE NEWSPAPERS MAY REMAIN CLASSIFIED BECAUSE THEIR SECURITY HAS NOT BEEN SERIOUSLY BREACHED, SOURCES SAID.

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UPI-7

(THE FBI & THE REPORTS)

WASHINGTON--HIGH ADMINISTRATION SOURCES REPORT FBI AGENTS HAVE PINPOINTED TWO LOCATIONS IN CAMBRIDGE, MASS., WHERE COPIES OF SECRET PENTAGON DOCUMENTS PUBLISHED BY THE NEW YORK TIMES WERE REPRODUCED.

COPIES WERE MADE AT THE TWO LOCATIONS FROM A "WORKING DRAFT" OF ABOUT 40 VOLUMES OF THE 47-VOLUME REPORT ON U.S. INVOLVEMENT IN VIETNAM, THE SOURCES SAID MONDAY NIGHT.

THE TIMES DOES NOT POSSESS THE ENTIRE REPORT AND DID NOT ACQUIRE THE FINAL CONCLUSIONS CONCERNING FORMER PRESIDENT JOHNSON'S POLICY AND INTENTIONS TOWARD THE WAR, THE SOURCES SAID. THEY SAID THE CONCLUSIONS WERE CONTAINED ONLY IN THE FINISHED STUDY.

WHILE OFFICIALS WOULD NOT DISCLOSE THE LOCATION OF THE DUPLICATING MACHINES WHERE THE DOCUMENTS WERE REPRODUCED, THEY PREDICTED THE JUSTICE DEPARTMENT WOULD MOVE SOON IN BRINGING CHARGES AGAINST AT LEAST ONE PERSON.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-153

ADD 3 VIET REPORTS, WASHINGTON

TWO FBI AGENTS QUESTIONED REP. PAUL MCCLOSKEY TODAY ABOUT THE DOCUMENTS HE RECEIVED FROM DR. DANIEL ELLSBERG.

MCCLOSKEY, WHO SAID HE WILL GIVE "INFORMATION" ABOUT THE DOCUMENTS BEFORE THE HOUSE FREEDOM OF INFORMATION SUBCOMMITTEE THIS WEEK, SAID THE AGENTS ASKED VERY FEW QUESTIONS IN THEIR BRIEF 10 TO 15 MINUTE VISIT IN THE CONGRESSMAN'S OFFICE.

"I AGREED TO MEET WITH THEM AT THE REQUEST OF ROBERT MARDIAN (AN ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE INTERNAL SECURITY DIVISION OF THE JUSTICE DEPARTMENT) BUT I DIDN'T INTEND TO MEET WITH THEM PRIVATELY," MCCLOSKEY TOLD NEWSMEN. "YOU KNOW, WE'VE ALL HEARD ABOUT THE FBI BUGGING CONVERSATIONS. BUT THEY INSISTED, SO WE MET PRIVATELY."

"THEY ASKED ONLY IF I HAD DOCUMENTS BUT THEY DIDN'T ASK TO SEE THEM," HE SAID. "THEY ASKED ABOUT MY DISCUSSIONS WITH ELLSBERG BUT I REFUSED TO DISCUSS THAT."

THE FBI HAS BEEN TRYING TO LOCATE ELLSBERG, AS PART OF ITS INVESTIGATION OF WHO LEAKED THE STUDY TO THE TIME.

MCCLOSKEY SAID HIS DOCUMENTS ARE "IN A SAFE IN MY OFFICE AND ONLY I, MY ADMINISTRATIVE ASSISTANT AND THE BUILDING MAINTENANCE MAN WHO INSTALLED THE SAFE KNOW THE COMBINATION."

"I'M SURE OF MYSELF AND MY ASSISTANT BUT NOT THAT THIRD GUY AND FOR THAT REASON ONE OF MY STAFF SLEEPS BY THAT SAFE EVERY NIGHT," MCCLOSKEY SAID.

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UPI-90

(VIET REPORTS)

CHICAGO--HERBERT G. KLEIN, WHITE HOUSE COMMUNICATIONS DIRECTOR, SAID TODAY THE FEDERAL GOVERNMENT'S MOTIVES IN LAWSUITS OVER THE PUBLICATION OF SECRET PENTAGON DOCUMENTS IS TO PROTECT GOVERNMENT SECURITY WITHOUT ENDANGERING CONSTITUTIONAL RIGHTS.

KLEIN, SPEAKING AT AN AMERICAN FURNITURE MART SUMMER SHOW BREAKFAST HERE, SAID HE COULD SEE "A CASE FOR BOTH SIDES." HE SAID THE COURT IS THE "PROPER PLACE TO DETERMINE WHO IS RIGHT AND WHO IS WRONG," WHERE THE TWO SIDES CAN DIFFER RATIONALLY.

BOTH THE NEW YORK TIMES AND THE WASHINGTON POST MEET FEDERAL LAWYERS TODAY IN SEPARATE APPELLATE COURTS OVER STORIES THE PAPERS HAVE BEEN PUBLISHING. THE STORIES ARE TAKEN FROM SECRET PENTAGON DOCUMENTS, AND THE GOVERNMENT CONTENDS THEIR PUBLICATION IS A BREACH OF SECURITY.

THE NEWSPAPERS SAY THEY ARE UPHOLDING THE PUBLIC'S RIGHT TO KNOW. KLEIN SAID HE WOULD HATE TO SEE THE CASE DEVELOP INTO "A PERSONAL THING BETWEEN THE GOVERNMENT AND TWO NEWSPAPERS."

THE MOTIVES OF THE GOVERNMENT, HE SAID, ARE "NOT TO HAVE LESS FREEDOM OF THE PRESS" NOR "TO SUPPORT SECRECY FOR SECRECY'S SAKE."

THE NIXON ADMINISTRATION, ACCORDING TO KLEIN, DOES NOT WANT TO "COVER UP POSSIBLE MISTAKES FOR PAST ADMINISTRATIONS."

THE GOVERNMENT, SAID KLEIN, IS TRYING TO UPHOLD THE LAW IN ITS SUITS AGAINST THE TWO NEWSPAPERS. "IF IT IS BROKEN," HE SAID, THE GOVERNMENT PLANS TO SEE THAT THE LAW IS APPLIED "EQUALLY TO GREAT NEWSPAPERS AND INDIVIDUALS."

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UPI- S

(VIET REPORTS)

WASHINGTON--THE FEDERAL GOVERNMENT, IN TWO SEPARATE CASES WHICH MAY BE BEFORE THE SUPREME COURT WITHIN A WEEK, GOES INTO THE APPELLATE COURTS TODAY TO KEEP THE WASHINGTON POST AND THE NEW YORK TIMES FROM PUBLISHING ANY MORE OF A SECRET PENTAGON REPORT ON INDOCHINA.

THE POST CASE WAS TO BE HEARD IN THE U.S. COURT OF APPEALS IN WASHINGTON AND THE TIMES CASE BY THE U.S. COURT OF APPEALS IN NEW YORK. BOTH CASES WERE SCHEDULED TO START AT 2 P.M. EDT.

U.S. DISTRICT JUDGE GERHARD A. GESELL IN WASHINGTON MONDAY RULED IN FAVOR OF THE PST, SAYING PUBLICATION OF THE REPORT DID NOT THREATEN NATIONAL SECURITY AND THAT FREEDOM OF THE PRESS OUTWEIGHED THE GOVERNMENT'S OBJECTIONS TO THE CASE.

BUT THE APPEALS COURT INTERVIEWED ON THE GOVERNMENT'S REQUEST AND ORDERED THE POST NOT TO CONTINUE ITS SERIES UNTIL IT RULED ON THE CASE TODAY.

THE TIMES ALSO RECEIVED A FAVORABLE RULING FROM U.S. DISTRICT JUDGE MURRAY GURFEIN SATURDAY BUT THE APPEALS COURT IN NEW YORK PROHIBITED PUBLICATION UNTIL ITS MEMBERS COULD RULE ON THE CASE.

THE TWO CASES HAVE RECEIVED SPEEDY TREATMENT IN THE COURTS BECAUSE THE ISSUES INVOLVED -- NATIONAL SECURITY AND FREEDOM OF THE PRESS -- ARE SO GREAT THE CASES WILL ALMOST CERTAINLY GO TO THE SUPREME COURT. THE HIGH COURT IS EXPECTED TO END ITS CURRENT SESSION, MONDAY, NECESSITATING THE HASTE.

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REC-15

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UPI-107

(VIET REPORTS)

WASHINGTON--THE JUSTICE DEPARTMENT TODAY ASKED THE BOSTON GLOBE
 NEWSPAPER TO STOP PUBLISHING PENTAGON DOCUMENTS ON THE VIETNAM WAR.

IN A TELEGRAM TO THE PUBLISHER OF THE BOSTON PAPER, ATTORNEY
 GENERAL MITCHELL SAID:

"I RESPECTFULLY REQUEST THAT YOU PUBLISH NO FURTHER INFORMATION OF
 THIS CHARACTER AND ADVISE ME THAT YOU HAVE MADE ARRANGEMENTS FOR THE
 RETURN OF THESE DOCUMENTS TO THE DEPARTMENT OF DEFENSE."

MITCHELL SAID THAT HE HAD INFORMED THE EDITOR OF THE PAPER BY
 TELEPHONE THAT THE MATERIAL "CONTAINS INFORMATION PERTAINING TO THE
 NATIONAL DEFENSE OF THE UNITED STATES AND ITS FOREIGN POLICY AND
 BEARS A TOP SECRET CLASSIFICATION."

THE MITCHELL TELEGRAM SAID THAT ANY FURTHER ATTEMPT TO PUBLISH
 THE DOCUMENTS "WILL CAUSE IRREPARABLE INJURY TO THE DEFENSE INTEREST
 OF THE UNITED STATES." MITCHELL SAID THAT ANY PUBLICATION OF THE
 INFORMATION IN THE 47-VOLUME HISTORY RELATING TO DECISIONS TAKEN IN
 VIETNAM BECAUSE IT IS TOP SECRET WOULD BE "DIRECTLY PROHIBITED" BY THE
 NATION'S ESPIONAGE LAW.

IN BOSTON A SPOKESMAN FOR EDITOR THOMAS WINSHIP SAID THE GLOBE
 TURNED DOWN MITCHELL'S REQUEST TO CEASE PUBLISHING FURTHER INFORMATION
 FROM THE PENTAGON STUDY.

"WE FEEL THE ISSUE INVOLVED IS THE CONSTITUTIONALLY PROTECTED
 RIGHT OF THE PEOPLE TO KNOW AS GUARANTEED BY THE FIRST AMENDMENT,"
 THE SPOKESMAN SAID.

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UPI-63

(VIET REPORTS)

WASHINGTON--DEFENSE SECRETARY MELVIN R. LAIRD SAID TODAY HE HAS ORDERED HIS DEPARTMENT TO BEGIN DECLASSIFYING PAPERS RELATING TO THE ORIGINS OF THE VIETNAM WAR.

LAIRD TOLD NEWSMEN DURING A BREAK IN AN APPEARANCE BEFORE A SENATE APPROPRIATIONS SUBCOMMITTEE THAT HE HAD ORDERED THE "STEPPED UP" RELEASE OF VOLUMES PREPARED BY THE PENTAGON WHICH INCLUDE PREVIOUSLY TOP SECRET DOCUMENTS, SOME OF WHICH HAVE ALREADY BEEN PUBLISHED.

LAIRD SAID HE DID NOT KNOW WHEN THE FULL 46-VOLUME STUDY WOULD BE RELEASED IN ITS ENTIRETY.

"WE WILL MOVE AS RAPIDLY AS WE CAN," HE SAID.

LAIRD SAID HE WOULD DISCUSS THE MATTER WITH CONGRESSIONAL COMMITTEES WHO HAD REQUESTED THE DOCUMENTS IN A SERIES OF MEETINGS TOMORROW.

~~THE SECRETARY MADE IT CLEAR THAT, WHEN THE DOCUMENTS ARE RELEASED, IT WILL HAVE NO EFFECT ON THE POSSIBLE CRIMINAL ACTIONS~~

THE SECRETARY MADE IT CLEAR THAT, WHEN THE DOCUMENTS ARE RELEASED, IT WILL HAVE NO EFFECT ON THE POSSIBLE CRIMINAL ACTIONS BY THE JUSTICE DEPARTMENT AGAINST PERSONS WHO HE SAID HAD "STOLEN" THE PAPERS AND RELEASED THEM TO THE PRESS.

"THIS WON'T HAVE ANYTHING TO DO WITH ANY CRIMINAL ACTION," HE TOLD NEWSMEN.

LAIRD DENIED, MEANWHILE, A CHARGE HE SAID HAD BEEN LEVELED BY FORMER WHITE HOUSE PRESS SECRETARY PIERRE SALINGER THAT LAIRD HIMSELF HAD RELEASED THE DOCUMENTS. HE TOLD NEWSMEN FLATLY IT WAS NOT TRUE.

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WASHINGTON CAPITAL NEWS 1971

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UPI-122

ADD 1 VIET REPORTS, WASHINGTON (UPI-107)

THE SENATE FOREIGN RELATIONS COMMITTEE PLANS A FULL INVESTIGATION INTO THE HISTORY OF THE U.S. INVOLVEMENT IN VIETNAM, COMMITTEE CHAIRMAN J. WILLIAM FULBRIGHT D-ARK., SAID TODAY.

HE SAID THE COMMITTEE WILL MAKE FINAL PLANS LATE THIS AFTERNOON ON THE SCOPE AND SCHEDULING OF THE NEW INVESTIGATION WHICH HAS BEEN PROMPTED, AT LEAST IN PART, BY THE PUBLICATION OF SECRET PENTAGON DOCUMENTS ON THE HISTORY OF THE WAR.

FULBRIGHT SPOKE WITH REPORTERS AFTER A MEETING OF THE COMMITTEE DURING THE MORNING. HE SAID A FINAL AGREEMENT WAS POSTPONED UNTIL LATER BECAUSE SEVERAL INTERESTED MEMBERS WERE ABSENT FROM THE MORNING SESSION.

DECLARING HIMSELF "FULLY IN SYMPATHY" WITH THE NEWSPAPERS DECISION TO PUBLISH THE PAPERS, FULBRIGHT -- WHO WAS IN LONDON WHEN THE PAPERS APPEARED LAST WEEK -- SAID HE WAS NOT SURPRISED AT THE DISCLOSURES IN THE PAPERS.

"I HAVE MADE A NUMBER OF STATEMENTS AND SPEECHES FOR THE PAST SEVERAL YEARS TO THE EFFECT THAT THE CONGRESS AND, THEREFORE, THE PEOPLE HAD BEEN DECEIVED, FULBRIGHT SAID. HE ADDED THAT "NOBODY PAID ANY ATTENTION TO ME."

FULBRIGHT SAID THE COMMITTEE HAS "PARTS" OF THE PENTAGON STUDY. HE SAID IT HAS BEEN TREATED AS A SECRET DOCUMENT ALTHOUGH HE, PERSONALLY, FEELS THE "PRACTICE OF CLASSIFICATION HAS BEEN GREATLY ABUSED" IN THIS AND OTHER CASES.

HE SAID THE COMMITTEE HAS ALSO REQUESTED -- BUT NOT YET RECEIVED -- A "COMMAND AND CONTROL STUDY" WHICH IS A SEPARATE AND SHORTER DOCUMENT PREPARED IN THE PENTAGON ON VIETNAM OPERATIONS.

DEFENSE SECRETARY MELVIN R. LAIRD SAID TODAY THE PENTAGON WOULD BEGIN RELEASING DECLASSIFIED DOCUMENTS ON THE ORIGINS OF THE VIETNAM WAR IN ABOUT 90 DAYS.

LAIRD SAID HE HAD ORDERED A REVIEW OF SECRET DOCUMENTS OF THE JOHNSON AND KENNEDY ADMINISTRATIONS TO DETERMINE WHICH ONES COULD BE RELEASED WITHOUT HURTING THE NATIONAL SECURITY.

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(VIET REPORTS)

BOSTON--THE CONCLUDING PART OF THE CLASSIFIED PENTAGON STUDY ON THE VIETNAM WAR SAYS PRESIDENT JOHNSON HAD DECIDED TO SUPPORT SOUTH VIETNAM BUT REDUCE AMERICAN TROOPS IN A POLICY WHICH PRESIDENT NIXON WOULD NAME VIETNAMIZATION, THE BOSTON GLOBE SAID TODAY.

THE DDCISION WAS MADE JUST BEFORE JOHNSON ANNOUNCED MARCH 31, 1968, HE WOULD NOT SEEK ANOTHER TERM, THE GLOBE SAID.

THE GLOBE SAID SECTIONS OF THE STUDY CAME TO THEM MONDAY. THEY DID NOT MENTION THE SOURCE NOR WHETHER THEY HAD FURTHER DOCUMENTS.

THEY INCLUDE, BESIDE THE JOHNSON DOCUMENTS:

--A RECOMMENDATION TO PRESIDENT KENNEDY FROM GEN. MAXWELL D. TAYLOR THAT 8,000 U.S. GROUND COMBAT TROOPS BE SENT INTO VIETNAM UNDER THE PRETEXT OF FLOOD CONTROL. TAYLOR SAID THIS MIGHT INCREASE WORLD TENSIONS AND WIDE THE WAR. THE GLOBE SAID KENNEDY DID NOT APPROVE TAYLOR'S REQUEST FOR GROUND COMBAT TROOPS.

--A REQUEST TO THE SOVIET UNION IN MAY, 1965, ASKING THEM TO OFFICIALLY INFORM HANOI THAT THE UNITED STATES WOULD TEMPORARILY PAUSE BOMBING NORTH VIETNAM AS A PEACE FEELER. THE SOVIETS REFUSED, THE GLOBE SAID, BECAUSE THEY FELT CHINA WOULD CHARGE COLLUSION WITH THE UNITED STATES.

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WASHINGTON CAPITAL NEWS SERVICE

--A REPORT OF A JUNE 2, 1964, MEETING IN HONOLULU WHERE DEFENSE SECRETARY ROBERT S. MCNAMARA RAISED THE POSSIBILITY OF USING NUCLEAR WEAPONS AT SOME POINT IF CHINESE FORCES ENTERED THE GROUND WAR.

ACCORDING TO THE GLOBE, THE JANUARY, 1968, TET OFFENSIVE SHOOK UP WASHINGTON'S CONFIDENCE IN AN EVENTUAL END TO THE WAR AND "ALTHOUGH IT HAD BEEN PREDICTED, TOOK THE U.S. COMMAND AND THE U.S. PUBLIC BY SURPRISE AND ITS STRENGTH, LENGTH AND INTENSITY PROLONGED THIS SHOCK."

AT THIS POINT, THE STUDY SAID THE JOINT CHIEFS OF STAFF RECOMMENDED REFUSING REQUESTS FOR ADDITIONAL COMBAT TROOPS BECAUSE THE RESERVES -- NEEDED IN CASE OF DOMESTIC DISORDERS -- WERE BECOMING TOO THIN.

~~SECRET~~

THE GLOBE SAID THE ANALYST SAID IN THE EPILOGUE:

"THE POSSIBILITY OF MILITARY VICTORY HAD SEEMINGLY BECOME REMOTE AND THE COST HAD BECOME TOO HIGH BOTH IN POLITICAL AND ECONOMIC TERMS. ONLY THEN WAS IT REALIZED THAT A CLEAR-CUT MILITARY VICTORY WAS PROBABLY NOT POSSIBLE OR NECESSARY..."

6/22--GE851A

"In the absence of any real information, I prefer to assume the best. The reason the CIA wants its own people inside the network news departments is to find out what is going on in the world."

Network TV and the CIA

By Marvin Kitman

NEW YORK—"I hope so," a top network news executive explained, when I asked him if he had any CIA agents on his staff. "It's a sign that you have a proper news organization. We'd lose face in the business if CIA felt we weren't worth infiltrating."

It seems that a lot of TV viewers were shocked by the recent revelation that CIA twice tried to hire Sam Jaffe while he served as a correspondent for CBS News and later as Moscow bureau chief for ABC News. If CIA had been successful, the fear is he may have been in a position to fool the public, which is under the impression that TV foreign correspondents are never influenced by our government.

Jaffe explained—on Steve Scheuer's "All About TV," a syndicated public television show—that he turned CIA down flat both times. I think he made a mistake.

It's a lot steadier working for CIA than the TV networks. (Jaffe's had three or four jobs since the agency first tried to recruit him.) And it pays well.

CIA has a bad reputation in some circles. But we should remember that our taxes support the organization. Its editorial point of view isn't very much different from the networks'. They're all solidly anti-Communist.

For anybody with a taste of adventure—the reason

men become foreign correspondents—being a CIA agent is certainly more exciting than being an FBI agent. Overthrowing some left-wing government is a more socially useful activity than spying on hippie college kids.

Before getting upset about the attempt to recruit Jaffe, I would suggest viewers try to find out what CIA wanted him to do at the networks. Unfortunately, the publicity department at CIA isn't much help in answering questions like this. "As a matter of policy," the agency PIO always explains, "CIA does not confirm the accuracy of, nor dispute the inaccuracy of, what may be said about the agency."

This plays into the hands of TV viewers who automatically assume that CIA wanted Jaffe to mangle the news, twist the bad into the good or give the public the CIA line about sensitive issues. The swine!

In the absence of any real information, I prefer to assume the best. The reason CIA wants its own people inside the network news departments is to find out what's going on in the world.

CIA has seen examples of the work of network foreign correspondents on the news shows. While they only see 90 seconds or so, CIA executives have an inkling the reporting is sounder than

their own private news sources. The networks always seem to be a step ahead of CIA's highly paid informers.

Perhaps it would have been wiser for CIA to set up its own ABC and CBS affiliates in Kansas or Wisconsin—with the call letters KCIA or WCIA—and be fed all the network news shows and out-takes. But they decided it would be cheaper to buy one of the network news employees, thus tapping the news-gathering apparatus. It's no more shocking a thing than planting somebody in the morgue of the New York Times so the agency can have access to that paper's terrific files.

What disturbs students of CIA like Hughes Rudd, the CBS correspondent who has received numerous offers, is the agency's style. "They got it into their heads that I spoke fluent Flemish," Rudd explained. "They persisted in that for five years."

"Every time they offered me a job they spoke Flemish. It's hard for me to even understand French. 'This language is gibberish,' I'd tell them. 'Come on, Rudd,' they'd say. 'We know you speak Flemish.' I finally had to tell them they weren't offering enough money. They understood that. Boy, it was spooky."

To this day, Rudd told me, he still runs into CIA agents at the press bars. "They turn their backs on me. It shows you how smooth they are."

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Government itself plants stories

Post affidavits attest to the value of news leaks

REC-15

By JOSEPH VOLZ

It is no secret that a reporter covering government can't get by in Washington without regularly printing classified information.

That was the intention yesterday of several

Washington Post editors and reporters' trying to convince U.S. District Court Judge Gerhard Gesell that publication of official secrets is nothing new.

Affidavits filed with Judge Gesell by Post newsmen gave the impression that the government constantly tries to seduce the Post into publishing portions of classified information which puts the administration — any administration — in good light.

Murray Marder, veteran Post diplomatic correspondent, said "No competent reporting on diplomatic, military or related affairs is possible without some form of officially sanctioned, but rarely officially admitted, access to what is labeled as confidential secret or top secret information."

Mr. Marder said a 1965 story he wrote on the controversial landing of American troops in the Dominican Republic was "based in considerable part on government cables which were highly classified and still, as far as I know, remain classified."

RED INK

Post Executive editor Benjamin C. Bradlee, a slender energetic man who splashed up the front of his jacket with blood-colored ink during today's battle with Justice Department lawyers, not only received highly classified information as a newsman but leaked some himself when he was in government.

Mr. Bradlee said President Kennedy, "once read portions to me of a highly classified memorandum of conversation between him and Nikita Khrushchev in Vienna in 1961. I received his permission to use this material, which is still highly classified."

The Post editor, who was working for Newsweek at the time said, "The President's stated purpose was to convince the American public that the Soviet Union was taking an extremely belligerent line on Berlin."

And Mr. Bradlee confessed: "When I was a member of the foreign service of the U.S. in Paris in 1952 I myself was instructed by a superior to leak the contents of a secret cable dealing with a Soviet note to the American government. And I did so to a correspondent of the United Press."

Post reporters defended their publication of

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volunteered classified info by saying they tried to balance it with other classified info not volunteered by the government.

Some of the newsmen covering the Post case here were concerned that they hadn't received their share of secrets. One reporter, who regularly covers the Pentagon for a major paper, said, only half kidding: "I stopped Mel Laird in the hall the other day and asked when he was going to leak something to me. He didn't think that was funny."

PRESS CONFERENCE

Mr. Bradley, holding a impromptu press conference, contended the Post and the New York Times, which first printed the Pentagon papers, might have avoided a confrontation with the government if a story a day had been printed "without flashing mirrors and sending up flares."

Judge Gesell, in refusing to issue a ban, said: "No one can measure the effect of even momentary delay" in running the story.

But Mr. Bradley, who argued the public had the right to know, didn't want the readers to find out too fast. He was not anxious to move the story over the Post-Syndicate wire until the presses rolled at his own newspaper five hours after Judge Gesell gave the go ahead. Mr. Bradley feared the Post would have scooped itself and other newspapers would have rushed into print first. The whole matter became academic long before presstime when Judge Gesell was overruled by appellate judges.

PICKETS

Meanwhile in front of the courthouse a handful of young men carried signs reading "We believe the Washington Post is deceiving the American public." The head picketer, John Vecchione of New York, who said he represented the National Student Coordinating Committee for Freedom in Viet Nam, complained that the newspaper had run articles on the Eisenhower and Johnson years but skipped the Kennedy administration.

The Taste of Security...

Or Is It Spinach?

By Art Buchwald

In dealing with the question of whether the New York Times was correct in printing excerpts from the top secret Pentagon report as to how we got involved in Vietnam, one must understand the entire question of classifying government documents.

To begin with, all branches of the government classify documents. The more classified documents a department has in its files, the more important it considers the work it is doing.

The lowest government classification for a classified document is LOU which stands for LIMITED OFFICIAL USE. This classification could be stamped on a document to announce a soft ball game, an office party, the vacation schedules of department heads, or what one must do in case of a nuclear bombing attack. (After the attack, report to your nearest post office and wait for instructions.) Almost anyone in the government family has access to LOU's, and you'll usually find mail-room boys reading them on elevators between deliveries of inter-office mail.

The next designation is CONFIDENTIAL which is really between LOU and SECRET. CONFIDENTIAL could have some security information in it (for example, not only would it give the time of the soft ball game, but ~~who~~ was pitching for the other side). Fewer people are allowed to see a CONFIDENTIAL memo than a LOU. (In the case of a nuclear bombing attack, a CONFIDENTIAL memo might tell you what to do if the post office wasn't there.)

After CONFIDENTIAL comes SECRET. A SECRET document is so categorized on a N to K basis. (Need to Know). Only those people who are actually involved in the project are supposed to have access to SECRET documents. They have an urgency to them that demands: "Deal with this before coffee break."

The next classification is TOP SECRET. It's hard for someone in the government to tell the difference between SECRET and TOP SECRET, other than when reading a TOP SECRET message your palms sweat more.

The final classification is LIM DIS, standing for LIMITED DISTRIBUTION. A LIM DIS is TOP SECRET with hair on it. The highest classification known publicly is LIM DIS FEO (For Eyes Only). If you get one of those it means you were in some way responsible for the nuclear attack. (See Paragraph 3 for this article.)

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Capitol Punishment

The Washington Post Times Herald FI
The Washington Daily News _____
The Evening Star (Washington) _____
The Sunday Star (Washington) _____
Daily News (New York) _____
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The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

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Now the important thing to understand is why people in the government classify their documents. ~~Here is~~ a scientific breakdown of reasons and percentages. The reason a paper is classified is—

(1) To make the person who wrote the document look important—10 per cent.

(2) To make the person reading the document think he is more important than he really is—10 per cent.

(3) To keep secretaries and file clerks busy during slack periods—15 per cent.

(4) To be on record in case someone ever calls you on a mistake someone else in the department made—10 per cent.

(5) To make sure the press will take it seriously when the document is leaked to them—15 per cent.

(6) To impress the public with your frankness when you declassify it—10 per cent.

(7) To protect the person (or persons) who were responsible for making the mistake(s)—25 per cent.

(8) National security—5 per cent.

What one must always keep in mind when dealing with something as dicey as the McNamara Pentagon report is that it may taste like national security to some people, but others say it's spinach and the hell with it.

Series Still Barred

Times Case Appeal Delayed Till Today

By George Lardner Jr.
Washington Post Staff Writer

NEW YORK, June 21—The U.S. Court of Appeals here ordered The New York Times today not to resume publication of the Pentagon's study of the Vietnam war until a hearing before the full appellate court.

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But aside from embarrassment of officialdom over the leak, Gurfein held, "no cogent

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The Washington Post Times Herald A-1
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reasons were advanced as to why these documents . . . would vitally affect the security of the nation."

Fighting to overturn Judge Gurfein's ruling, the government accused him of giving short shrift to "the heart" of its case, the 47-volume Pentagon history itself. In a brief filed this evening, U.S. Attorney Whitney North Seymour Jr. suggested that the trial judge should have read it all himself.

Judge Gurfein acknowledged in his decision that he had not been able to read through the voluminous study. He said he relied instead on the government "to pinpoint what it believed to be vital breaches to our national security . . ."

Seymour countered by charging that the judge, in failing to read "the essential exhibit," had "abused his discretion." Judge Gurfein, Seymour complained, urged the government to keep the secret proceedings as brief as possible. As a result, the prosecutor charged, the government was limited to a short presentation and relied on the judge for a thorough study.

Scolding the press, too, the

government, stressed Judge Gurfein's reluctance to move behind closed doors. At one point, Seymour protested, the judge asked him to confine the secret testimony "to those most serious security things which, in his best judgment as a representative of the government, he feels should not be in the courtroom."

All this, Seymour said today, "transpired in an atmosphere of extreme pressure generated by the presence of scores of newsmen who jammed the courtroom and overflowed into the corridors."

Beyond that, the U.S. attorney complained, one lawyer charged in open court that any secret hearing would be a "star chamber" proceeding.

That statement, Seymour protested, "produced murmurs of approval from the crowd of reporters present. There simply was no opportunity for a delineated page-by-page discussion of the main exhibit, he said. Instead, he added, the government was limited to a brief presentation of the types of national security problems involved.

Three administration witnesses — Dennis J. Doolin,

deputy assistant secretary of defense for international security affairs; Adm. Francis J. Blouin, deputy chief of Naval operations for plans and policy, and William B. Macomber, deputy under secretary of state for administration—testified both in public and private last week.

Times attorneys, led by Alexander M. Bickel, a professor of law at Yale, submitted a secret memorandum with the court today outlining what the newspaper called "the lack of substance" in the behind-the-scenes testimony. In the 83-page brief, The Times also assailed what was described as the shortcomings of the witnesses in public session.

The documents at issue in The Times case are a 1968 Pentagon history of U.S. involvement in Vietnam covering 47 volumes and a 1965 Defense Department study on the Tonkin Gulf incident.

Doolin, The Times noted, testified that he first saw the Tonkin Gulf study only after the newspaper began publishing its articles June 13. The newspaper's lawyers also pointed out that Doolin had recommended in 1969 that the Pentagon history be kept secret after reading only "seven or eight of the volumes" and surveying the others.

Blouin, the lawyers charged, was "no more specific" at least not in public.

"With regard to the Vietnam volumes, Adm. Blouin testified that he had 'little better than 24 hours' to get acquainted with the 47-volume Vietnam study, but that he felt 'quite well-informed now as to the content.'" The Times' brief said. "Despite his obviously limited familiarity with the documents, Adm. Blouin concluded that 'It would be a disaster to publish all of these other documents, let alone the ones that have already been published.'"

Of Macomber, the newspaper said that he, too, acknowledged "that he had become familiar with the Vietnam study only after its publication in The New York Times." But he testified that articles on it would be "harmful diplomatically" because they would make private communication with foreign nations difficult.

Seymour indicated that the government's briefs both public and secret, would be

filed with the appeals court later in the day. He asked at this morning's session for permission to file new affidavits from "defense agencies" as sort of a guide to the lengthy Vietnam history and, in particular, what the government considers its sensitive portions.

Bickel protested that the government had already had its chance at that before Judge Gurfein.

"This is a second bite of the apple," Bickel told the court. "I view this as a reopening of the record not subject to cross-examination."

Conceding that the affidavits "could be construed as testimony," Seymour offered to get together with The Times' lawyers on a compromise. He suggested that the government could make the same points as lawyers' arguments in the secret brief itself.

In the portion of its public brief faulting Judge Gurfein and the press, the government seemed to be acknowledging shortcomings in its secret presentation last week.

At another point, however, Seymour asserted, the testimony of the three witnesses "amply demonstrates" that the "Top Secret" classification accorded the documents is "neither arbitrary nor capricious, but is instead a wholly supportable and proper exercise" of the executive branch's discretionary powers.

The Times has submitted a batch of affidavits from reporters, editors and former government officials suggesting otherwise.

The newspaper also introduced copies of hundreds of news stories that it said were based at least partly on classified information. None, including the ones that formed a continuing series of articles, ever prompted the government to try to block publication.

Transmission of "classified" government information to the press, The Times' Washington bureau chief, Max Frankel, declared in one affidavit, is a regular practice in the Capital. He recalled one instance at the height of the Cuban missile crisis when Soviet Foreign Minister Andrei Gromyko denied any knowledge of the missiles in a conversation with President Kennedy.

A State Department official,

Frankel said, concluded that it would surely be in the national interest to demonstrate Gromyko's "perfidy" and so, within the hour, let Frankel take "verbatim notes of the Kennedy-Gromyko transcript—providing only that I would not use direct quotations.

"We printed the conversation between the President and the Foreign Minister in the third person even though the record probably remains a 'secret,'" Frankel said. "Similar dealings with high officials continue to this day," he added.

Former White House aide Theodore C. Sorenson said in another affidavit:

"Top Secret" stamps are frequently and routinely applied with only the loosest consideration of what, if any, direct and concrete injury to the nation's security interests would result if the general public were to be granted access to the information."

He said he saw nothing damaging in any of The Times' articles so far.

The Times lawyers concluded, "In the circumstances, the law the government now seeks to apply to The New York Times was written for the first time in the government's complaint."

The government insisted that there was nothing frivolous or essentially novel about the case. According to

what it has called The Times' "unauthorized possession" of the documents, U.S. Attorney Seymour suggested that they were "stolen" and consequently not entitled to the First Amendment rights of a free press.

The Times denied that its copy, supplied by "a confidential source," belongs to the government. What the newspaper has, its lawyer emphasized, is a Xerox copy. "The Times," they said, "does not hold anything that was taken from government files."

Even if it did, the attorneys contended that the First Amendment both protects their source and stands in the way of prepublication censorship.

The Times lawyers cited a suit filed by Liberty Lobby several years ago against two syndicated columnists to prevent publication of letters and documents "copied and removed" from the conservative organization's files. The suit was rejected, first in federal district court and then by the U.S. Circuit Court of Appeals for the District of Columbia.

"A free, open society elects to take calculated risks to keep expression uninhibited," Chief Justice Warren E. Burger, then a judge of the appeals court, wrote.

Seymour suggested that documents "relating to national defense" deserve more respect. He insisted that "the courts

have the power to ~~enjoin~~ the publication of stolen classified documents, both under their inherent equity powers and under the implied authority" of the Espionage Act first passed in 1917.

The government concluded by asking for a reversal of Judge Gurfein's decision or at least an order directing him to try the case again.

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JUN 22 1971

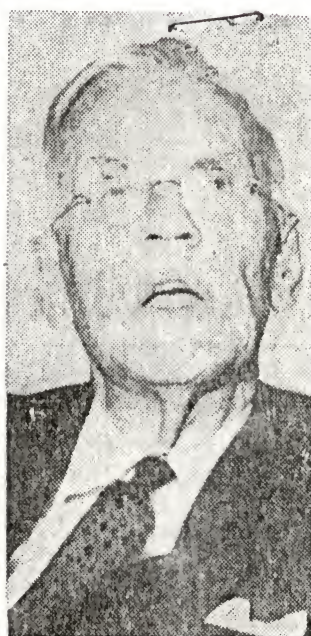
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Associated Press

Chief ~~Second~~ Circuit Appeals Judge Henry J. Friendly, left, and Judges J. Joseph

Smith, center, and Paul R. ~~Hays~~ delayed The New York Times hearing until today.

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Ellsberg, Kissinger^{A-8} Met Twice

KEY BISCAVNE, Fla., June 21 (UPI)—The White House confirmed Monday that Henry A. Kissinger, a chief architect of the Nixon administration's Vietnam policy, met twice with Daniel Ellsberg, the scholar accused of making public secret Pentagon documents on the war.

White House press secretary Ronald L. Ziegler said Kissinger met privately for about a half-hour with Ellsberg at the Western White House in San Clemente, Calif., last September.

He said Ellsberg also was among a group of Vietnam experts who met with Kissinger in late 1968, in New York City after Mr. Nixon was elected President, but before he was inaugurated.

Ziegler described the New York meeting as one of a series Kissinger held with Vietnam experts in developing the Nixon administration policy on Southeast Asia.

He said the meeting in San Clemente had been at the request of Ellsberg, who studied under Kissinger at Harvard.

Ellsberg has been named in a radio report as the source for the voluminous Pentagon report on which the New York Times based stories.

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UPI-92

ADD 1 VIET INQUIRY, WASHINGTON (UPI-72)
 IN THE HOUSE, MEMBERS MOVED TO OBTAIN COPIES OF THE SECRET
 PENTAGON STUDY.

REP. BELLA ABZUG, D-N.Y., INTRODUCED THE RARELY EMPLOYED
 "RESOLUTION OF INQUIRY," IN HOPES OF ACQUIRING THE 47-VOLUME STUDY
 PLUS OTHER INFORMATION ON THE ORIGINS AND OF THE WAR AS WELL AS
 PRESENT POLICY.

LAST USED IN 1950, BY THE BROTHER OF FORMER AMBASSADOR TO VIET NAM
 HENRY CABOT LODGE, A "RESOLUTION OF INQUIRY" MUST BE REPORTED BACK
 FROM COMMITTEE TO THE HOUSE FLOOR WITHIN SEVEN LEGISLATIVE DAYS.

THE RESOLUTION, IF APPROVED, WOULD FORMALLY ASK THE ADMINISTRATION
 FOR THE DOCUMENTS.

IN 1950 FORMER REP. JOHN DAVIS LODGE, R-CONN., INVOKED THE
 PROCEDURE TO GAIN INFORMATION ABOUT U.S. POLICY TOWARD FORMOSA.

SHORTLY AFTER MRS. ABZUG TOLD THE HOUSE OF HER INTENTIONS,
 REP. WILLIAM MOORHEAD, D-PA., ANNOUNCED THAT HIS GOVERNMENT
 INFORMATION SUBCOMMITTEE HAD ARRANGED FOR ARTHUR GOLDBERG, FORMER U.S.
 AMBASSADOR TO THE UNITED NATIONS AND EX-ASSOCIATE JUSTICE OF THE
 SUPREME COURT, TO BE THE OPENING WITNESS AT HEARINGS STARTING
 WEDNESDAY ON THE BROAD QUESTION OF CLASSIFIED DATA.

MEANWHILE, REP. PAUL MCCLOSKEY, R-CALIF., WHO SAYS HE HAS
 DOCUMENTS WHICH MAY BE PART OF THE PENTAGON STUDY, TOLD REPORTERS HE
 HAS NOT YET DECIDED HOW OR WHETHER HE WILL TRY TO MAKE THE MATERIALS
 PUBLIC. ONE AVENUE UNDER CONSIDERATION IS AN ATTEMPT TO PUBLISH
 THEM IN THE CONGRESSIONAL RECORD.

TAKING AN OPPOSITE VIEW TODAY WAS REP. SAMUEL STRATTON,
 D-N.Y., WHO SAID "IRRESPONSIBLE PUBLISHERS" OF THE POST AND TIMES,
 BY PRINTING THE DOCUMENTS, HAD "JEOPARDIZED" EFFORTS TO CONCLUDE U.S.
 INVOLVEMENT IN VIETNAM.

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WASHINGTON CAPITAL NEWS SERVICE

File 5-988

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UPI-28

(VIET REPORTS)

NEW YORK--SOURCES CLOSE TO FORMER PRESIDENT JOHNSON SAY HE BELIEVES THE LATE SEN. ROBERT F. KENNEDY WAS BEHIND THE PENTAGON STUDY OF THE VIETNAM WAR, NEWSWEEK MAGAZINE SAID SUNDAY.

JOHNSON HAS REMAINED SILENT ABOUT THE REPORTS BASED ON THE STUDY PUBLISHED LAST WEEK IN THE NEW YORK TIMES AND THE WASHINGTON POST.

BUT NEWSWEEK QUOTES "THOSE IN AUSTIN PRIVY TO HIS FEELINGS" AS SAYING HE FEELS THAT KENNEDY'S ASPIRATIONS TO RUN FOR THE PRESIDENCY IN 1968 MAY HAVE "INSPIRED THE REPORT."

KENNEDY WAS CLOSE TO FORMER DEFENSE SECRETARY ROBERT S. MCNAMARA WHO COMMISSIONED THE STUDY, THE SOURCES SAID.

JOHNSON SEES "THE GHOSTLY HAND OF ROBERT KENNEDY BEHIND THE REPORT, NEWSWEEK SAID.

THE TEXAS SOURCES ALSO BELIEVE PARTS OF THE REPORT, AS PUBLISHED IN THE TIMES, MAY HAVE BEEN WRITTEN BY JOHN KENNETH GALBRAITH, A FORMER ADVISER TO THE KENNEDY ADMINISTRATION.

GALBRAITH DENIED THAT EITHER HE OR KENNEDY HAD ANYTHING TO DO WITH THE STUDY. "IT IS A GREAT EXERCISE IN FANTASY," HE SAID AT HIS SUMMER HOME IN TOWNSEND, VT.

TIME MAGAZINE, IN AN ARTICLE NOT ATTRIBUTING ITS INFORMATION, SAID JOHNSON BELIEVES HIS BIGGEST MISTAKE IN VIETNAM WAS TO WAIT 18 MONTHS AFTER BEING IN OFFICE BEFORE SENDING MORE U.S. TROOPS INTO BATTLE. BY THEN HE FELT VIETNAM WAS ALMOST LOST, JOHNSON SAID.

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EX-109

WASHINGTON CAPITAL NEWS SERVICE

File 5-871
 65-74060 Sub 11

NEW YORK--THE MAN SAID TO HAVE LEAKED THE PENTAGON'S REPORT ON U.S. INVOLVEMENT IN VIETNAM HAS TOLD NEWSWEEK HE TRIED UNSUCCESSFULLY TO GET CAPITOL HILL DOVES AND WHITE HOUSE AIDES TO LOOK AT THE REPORT.

DANIEL ELLSBERG WAS INTERVIEWED BY NEWSWEEK SENIOR EDITOR JOEL BLOCKER AND PENTAGON CORRESPONDENT LLOYD NORMAN IN CAMBRIDGE, MASS., LAST WEEK. THE INTERVIEW WAS PUBLISHED SUNDAY.

ELLSBERG DID NOT ADMIT LEAKING THE REPORT TO THE NEW YORK TIMES AND THE WASHINGTON POST, BUT BLOCKER AND NORMAN SAID HE WAS PLEASED THEY PUBLISHED PARTS OF IT.

- O -

WASHINGTON--THE NATIONAL COMMANDER OF THE AMERICAN LEGION ANNOUNCED THAT HE HAS WRITTEN PRESIDENT NIXON CALLING FOR FULL PROSECUTION OF THOSE RESPONSIBLE FOR ALLOWING "HIGHLY CLASSIFIED NATIONAL SECURITY INFORMATION" TO FALL INTO THE HANDS OF THE NEW YORK TIMES.

ALFRED P. CHAMIE OF LOS ANGELES SAID, "WE OF THE AMERICAN LEGION WANT TO MAKE PERFECTLY CLEAR THAT WE DEPLORE THE RECENT DISCLOSURES OF HIGHLY CLASSIFIED NATIONAL SECURITY INFORMATION BY THE NEW YORK TIMES, AND URGE PROSECUTION TO THE FULLEST EXTENT OF THE LAW OF THOSE FOUND RESPONSIBLE FOR THIS UNAUTHORIZED DISCLOSURE."

"IT IS OUR VIEW THAT FREEDOM OF THE PRESS IS NOT A PRIMARY ISSUE IN THIS MATTER," CHAMIE'S LETTER CONTINUED. "THAT FREEDOM, AS WELL AS ALL OF OUR PRECIOUS FREEDOMS, WILL BE MATTERS ONLY OF ACADEMIC CONCERN IF OUR ENEMIES FIND READY ACCESS TO OUR NATIONAL SECURITY SECRETS."

- O -

GARDEN CITY, N.Y.--SEN. EDMUND S. MUSKIE, D-MAINE, SAYS HE WILL INTRODUCE A BILL TO CREATE A SEVEN-MEMBER INDEPENDENT BOARD RESPONSIBLE FOR DECLASSIFYING SECRET GOVERNMENT DOCUMENTS.

MUSKIE ALSO SAYS CONGRESS SHOULD FOLLOW THE RECOMMENDATION OF SENATE DEMOCRATIC LEADER MIKE MANSFIELD TO INVESTIGATE THE "ORIGINS OF THE WAR."

AT A TESTIMONIAL DINNER FOR EUGENE NICKERSON, A CONTENDER FOR THE DEMOCRATIC GUBERNATORIAL NOMINATION NEXT YEAR IN NEW YORK, MUSKIE SAID LAST NIGHT "AN INDEPENDENT BOARD COULD PROTECT NATIONAL SECURITY WITHOUT USING IT AS AN EXCUSE TO HIDE BLUNDERS OR LAUNCH COVERT POLITICS."

THE SENATOR DEFENDED THE RIGHTS OF THE NEW YORK TIMES AND THE WASHINGTON POST TO PUBLISH STORIES ABOUT CLASSIFIED PENTAGON PAPERS ON THE VIETNAM WAR.

- 0 -

MADISON--DELEGATES TO THE WISCONSIN DEMOCRATIC CONVENTION, BY VOICE VOTE, HAVE CENSURED FORMER PRESIDENT JOHNSON AND PRESIDENT NIXON FOR "DECEPTIONS AND THE TRAGIC CONSEQUENCES IN SOUTHEAST ASIA."

THE RESOLUTION, APPROVED SATURDAY AFTER STRENUOUS DEBATE, WAS BASED ON RECENT ARTICLES IN THE NEW YORK TIMES.

"WHEREAS THESE DOCUMENTS REVEAL THAT THE ADMINISTRATION REJECTED SUGGESTIONS FOR A NEGOTIATED SETTLEMENT...RESOLVED THAT THE DEMOCRATIC PARTY OF WISCONSIN HOLDS THE JOHNSON AND NIXON ADMINISTRATIONS RESPONSIBLE FOR THE WORST OF THESE DECEPTIONS AND THE TRAGIC CONSEQUENCES IN SOUTHEAST ASIA," THE RESOLUTION SAID.

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UPI-64

(VIET REPORTS)

NEW YORK--THE U.S. COURT OF APPEALS ANNOUNCED TODAY IT WOULD CONVENE A FULL EIGHT-JUDGE PANEL TOMORROW TO CONSIDER THE CONSTITUTIONAL QUESTIONS RAISED BY THE GOVERNMENT'S ATTEMPT TO STOP THE NEW YORK TIMES FROM PUBLISHING A SECRET PENTAGON REPORT ON VIETNAM.

CHIEF JUDGE HENRY J. FRIENDLY, WHO HAD BEEN EXPECTED TO CONVENE A THREE-JUDGE PANEL TO HEAR THE CASE TODAY, ANNOUNCED INSTEAD THAT THE FIVE OTHER JUDGES ACTIVE IN THE SECOND CIRCUIT HAD ASKED TO PARTICIPATE.

THE JUDGE SCHEDULED THE HEARING FOR 2 P.M. EDT TUESDAY AND CONTINUED AN ORDER RESTRAINING THE TIMES FROM PUBLISHING ANY FURTHER INFORMATION FROM THE PENTAGON PAPERS.

6/21--GE1138A

EX-100

REC-1

NOT RECORDED
170 JUN 30 1971

File 5- 800
65-74060 Sub 1

58 JUL 7 - 1971

WASHINGTON CAPITAL NEWS SERVICE

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UPI-67

ADD VIET REPORTS, NEW YORK (UPI-64)

IN NEW YORK, FRIENDLY PERMITTED THE NATIONAL EMERGENCY CIVIL LIBERTIES COMMITTEE AND THE AMERICAN CIVIL LIBERTIES UNION TO SUBMIT PAPERS ASKING TO INTERVENE AS "FRIENDS OF THE COURT." HE SAID THE COURT WOULD DETERMINE LATER WHETHER THEY COULD ENTER INTO ORAL ARGUMENT.

FRIENDLY DIRECTED ATTORNEYS FOR BOTH THE TIMES AND THE JUSTICE DEPARTMENT TO GET MATERIAL TO ALL THE JUDGES AS SOON AS POSSIBLE.

SITTING WITH FRIENDLY WERE JUDGES PAUL R. HAYS AND J. JOSEPH SMITH WHO CONCURRED IN THE ADJOURNMENT UNTIL TUESDAY AFTER A SHORT WHISPERED CONSULTATION ON THE BENCH.

6/21--GE1143A

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UPI-53

(VIET REPORTS)

WASHINGTON--A PENTAGON OFFICIAL TESTIFIED TODAY THAT SECRET GOVERNMENT DOCUMENTS REPORTED ON BY THE WASHINGTON POST AND NEW YORK TIMES WERE "TOP SECRET SENSITIVE" AND WERE RELATED TO CURRENT U.S. OPERATIONS IN VIETNAM.

DENNIS J. DOOLIN, DEPUTY ASSISTANT DEFENSE SECRETARY FOR INTERNATIONAL SECURITY AFFAIRS, MADE THE STATEMENT IN U.S. DISTRICT COURT WHERE THE POST WAS SEEKING LEGAL PERMISSION TO CONTINUE PUBLISHING ARTICLES BASED ON THE DOCUMENTS.

AFTER TWO HOURS OF PUBLIC TESTIMONY IN THE CASE, JUDGE GERHARD A. GESELL CALLED A SECRET SESSION TO HEAR MORE SENSITIVE TESTIMONY.

GESELL WAS UNDER HIGHER COURT ORDERS TO RENDER A DECISION AT 5 P.M. EDT ON WHETHER THE POST COULD RESUME PUBLICATION OF A SERIES, OF WHICH TWO HAVE BEEN CARRIED.

DOOLIN TOLD THE COURT THAT HE AND OTHER OFFICIALS EXAMINED THE DOCUMENTS INVOLVING VIETNAM POLICY STARTING IN 1969, AND RECOMMENDED TO DEFENSE SECRETARY MELVIN R. LAIRD THAT THEY BE KEPT SECRET BECAUSE THEY WERE "OF A HIGH DEGREE OF SENSITIVITY."

DOOLIN SAID THE REPORTS WERE CLASSIFIED "TOP SECRET SENSITIVE." ASKED IF THEY WERE RELATED TO CURRENT OPERATIONS IN VIETNAM, HE REPLIED: "THEY WERE -- THEY ARE."

AT THE OUTSET OF TODAY'S HEARING, THE JUDGE RULED THAT A GROUP OF CONGRESSMEN SUPPORTING THE RIGHT OF THE POST AND TIMES TO PRINT THEIR ARTICLES COULD NOT ENTER THE CASE AS "FRIENDS OF THE COURT."

6/21--GE1106A

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 170 JUN 30 1971

58 JUL 1 - 1971

WASHINGTON CAPITAL NEWS SERVICE

File 5- 912
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UPI-123

ADD 2 VIET REPORTS, WASHINGTON

THE GOVERNMENT GAVE GESSEL AN AFFIDAVIT THIS AFTERNOON INCLUDING A MEMO DATED JAN. 15, 1969, BY LESLIE H. GELB, CHAIRMAN OF A PENTAGON TASK FORCE WHICH PREPARED THE STUDY. NEWSMEN WERE GIVEN COPIES OF THE AFFIDAVIT.

IN HIS MEMO DESCRIBING THE REPORT, GELB SAID THE 36-MAN TASK FORCE OF RESEARCHERS HAD NO ACCESS TO WHITE HOUSE FILES AND WERE BARRED FROM INTERVIEWING "ANY OF THE PRINCIPAL PARTICIPANTS."

"THE RESULT WAS NOT SO MUCH A DOCUMENTARY HISTORY, AS A HISTORY BASED SOLELY ON DOCUMENTS -- CHECKED AND RECHECKED WITH ANT-LIKE DILIGENCE," GELB'S MEMO SAID.

"PIECES OF PAPER, FORMIDABLE AND SUGGESTIVE BY THEMSELVES, COULD HAVE MEANT MUCH OR NOTHING. PERHAPS THIS DOCUMENT WAS NEVER SENT ANYWHERE AND PERHAPS THAT ONE, THOUGH COMMENTED UPON, WAS IRRELEVANT.

"WITHOUT THE MEMORIES OF PEOPLE TO TELL US, WE WERE CERTAIN TO MAKE MISTAKES. YET, USING THOSE MEMORIES MIGHT HAVE BEEN MISLEADING AS WELL. THIS APPROACH TO RESEARCH WAS BOUND TO LEAD TO DISTORTIONS AND DISTORTIONS WE ARE SURE ABOUND IN THESE STUDIES.

"...WE HAD A SENSE OF DOING SOMETHING IMPORTANT AND OF THE NEED TO DO IT RIGHT. OF COURSE, WE ALL HAD OUR PREJUDICES AND AXES TO GRIND AND THESE SHINE THROUGH CLEARLY AT TIMES, BUT WE TRIED, WE THINK, TO SUPPRESS OR COMPENSATE FOR THEM.

"...WRITING HISTORY, ESPECIALLY WHERE IT BLENDS INTO CURRENT EVENTS, ESPECIALLY WHERE THAT CURRENT EVENT IS VIET NAM, IS A TREACHEROUS EXERCISE. WE COULD NOT GO INTO THE MINDS OF THE DECISION MAKERS; WE WERE NOT PRESENT AT THE DECISIONS, AND WE OFTEN COULD NOT TELL WHETHER SOMETHING HAPPENED BECAUSE SOMEONE DECIDED IT, DECIDED AGAINST IT OR MOST LIKELY, BECAUSE IT UNFOLDED FROM THE SITUATION."

6-21--PA230PED

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 170 JUN 30 1971

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UPI-5

(VIET REPORTS)

NEW YORK--THE NEW YORK TIMES HAS ANOTHER DAY IN COURT TODAY IN A FIGHT TO PUBLISH EXCERPTS FROM A SECRET PENTAGON STUDY OF THE VIETNAM WAR COMPLETED IN 1968.

A THREE-JUDGE PANEL OF THE U.S. COURT OF APPEALS WILL CONSIDER THE RIGHT OF THE TIMES TO PUBLISH THE SERIES WHICH HAS BEEN BLACKED OUT SINCE LAST TUESDAY. THAT RIGHT WAS UPHELD SATURDAY BY A U.S. DISTRICT JUDGE, BUT A RESTRAINING ORDER BLOCKING PUBLICATION WAS CONTINUED UNTIL THE APPEALS COURT COULD RULE. //

TIMES VICE PRESIDENT SYDNEY GRUSON SAID THE NEWSPAPER WOULD ASK THAT THE BAN BE LIFTED, AND PUBLICATION OF THE ARTICLES COULD FOLLOW IN TUESDAY'S EDITIONS IF THE RESTRAINING ORDER IS NOT EXTENDED PENDING AN APPEAL TO THE SUPREME COURT. IN TODAY'S EDITION, THE TIMES SAID THE CASE LIKELY WOULD REACH THE HIGH COURT SINCE EITHER THE GOVERNMENT OR THE NEWSPAPER WOULD APPEAL IF IT LOSES.

IN SATURDAY'S RULING, U.S. DISTRICT JUDGE MURRAY I. GURFEIN SAID THE JUSTICE DEPARTMENT HAD NOT PROVEN THAT RELEASE OF THE PENTAGON DOCUMENTS WOULD HARM THE NATIONAL INTEREST ENOUGH TO JUSTIFY AN UNPRECEDENTED "PRIOR RESTRAINT" ON PUBLICATION. GURFEIN HAD ISSUED THE ORIGINAL TEMPORARY INJUNCTION LAST TUESDAY TO ALLOW THE CASE TO BE HEARD.

TODAY'S HEARING WAS EXPECTED TO BE SHORT WITH NO WITNESSES HEARD. IN GURFEIN'S COURT, A FIVE-HOUR SECRET SESSION WAS HELD IN HIS CHAMBERS.

EX-100

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 170 JUL 30 1971

File 5 - 844

65-74060 A-11

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WASHINGTON CAPITAL NEWS SERVICE

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WASHINGTON--THE WASHINGTON POST'S FIGHT TO PUBLISH A SERIES OF ARTICLES BASED ON THE SECRET VIETNAM INVOLVEMENT REPORT HEADED BACK TO COURT TODAY, WITH A DECISION EXPECTED LATE IN THE DAY.

U.S. DISTRICT JUDGE GERHARD A. GESELL WAS UNDER A DIRECTIVE FROM THE U.S. COURT OF APPEALS TO HOLD A FULL HEARING TODAY AND RENDER A DECISION BY 5 P.M. EDT.

LAST FRIDAY GESELL DENIED THE GOVERNMENT'S INITIAL REQUEST FOR A COURT ORDER TO STOP THE POST FROM PUBLISHING THE ARTICLES. BUT EARLY SATURDAY MORNING HE WAS REVERSED AT THE APPEALS LEVEL AND THE HIGHER COURT IN EFFECT TOLD HIM TO PASS ON THE MERITS OF THE CASE AT TODAY'S HEARING.

THE GOVERNMENT HAD CLAIMED THE ARTICLES COULD CAUSE "IRREPARABLE INJURY" TO NATIONAL SECURITY. THE POST HAD PUBLISHED ARTICLES IN ITS FRIDAY AND SATURDAY EDITIONS BUT SUSPENDED THE SERIES SUNDAY.

THE ARTICLES WERE BASED ON THE SAME TOP SECRET PENTAGON REPORT WHICH THE NEW YORK TIMES USED FOR A SIMILAR PURPOSE AND WHICH ALSO BROUGHT IT INTO COURT WITH THE GOVERNMENT.

6/21--GE832A

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UPI-32

ADD 1 VIET REPORTS, WASHINGTON (UPI-53)

ALTHOUGH THE JUDGE DENIED A MOTION BY THE CONGRESSMEN TO INTERVENE ON THE POST'S BEHALF, HE DID ALLOW THEM TO FILE A BRIEF AS "FRIENDS OF THE COURT" UNDER WHAT HE CALLED "SPECIAL STATUS."

BEFORE THE HEARING STARTED, GESELL SAID THAT "UNDER PROTEST" THE POST HAD PROVIDED THE GOVERNMENT WITH A LIST OF THE MATERIALS IT HAS. "IT DOES NOT APPEAR," THE JUDGE SAID, "THAT THE POST HAS ALL THE SAME DOCUMENTS THAT THE TIMES HAS."

6-21--PA1246PED

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 170 JUN 30 1971

File 5-ERR
 65-74600 Sub H

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More on the Vietnam papers

SO FAR, the Justice Department has made a weak case in contending that publishing the "Pentagon Papers" on Vietnam would severely damage the national interest.

Thus, U.S. District Judge Murray Gurfein seems correct in refusing to stop The New York Times from continuing to print the embezzled secret papers on the origins of the Vietnam War.

It may be that in appealing the ruling to higher courts the Justice Department will be able to show how publicizing the documents covering 1954 to 1960 threatens national security. But until then we go along with The Times' (and the Post's) right to print them and with Judge Gurfein's decision.

He rightly held that the First Amendment guarantee of freedom of the press should not be limited by censorship except in matters "absolutely vital to current national security." The Pentagon study, he found, consisted of "historic" documents more likely to embarrass officials than to threaten the nation.

In an impressive decision for a judge who had been on the bench only a week, he wrote:

"If there be some embarrassment to the government . . . we must learn to live with it. The security of the nation is not at the ramparts alone. Security also lies in the value of our free institutions.

"A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."

Altho the government thus appears to lack constitutional grounds to keep stolen, strayed or borrowed papers out

of print, we sympathize with its motives in bringing suit.

The Pentagon study was misappropriated by a faithless ex-official and slipped to The Times because he disagreed with Vietnam policy. President Nixon allowed the lawsuit because he feared setting a precedent — that every time an official disagreed with the government, he'd sneak secret papers to the press in hopes of changing policy.

To discourage such chaos, Mr. Nixon might do well to prosecute The Times' leaker. The administration may not be able to prevent newspapers from printing stolen documents. But it can enforce the law against individuals who steal and illegally disclose classified material.

Also, the government should thoroly review the present system of classifying everything short of toilet paper as "top secret." Many of the Pentagon documents were not sensitive and should not have been classified.

A policy of leveling with the public is long overdue. Only genuine secrets affecting national security should be withheld. And these, being fewer in number, should be easier to hang on to.

Finally, we feel sorry for Mr. Nixon, who is an innocent victim of the Case of the Purloined Papers. Their thrust was to underline the duplicity with which President Johnson led the nation into Vietnam.

But their effect is to increase mistrust of all government, including the present one. This quite unfairly makes it harder for Mr. Nixon to lead the country out of Vietnam in an orderly way.

If so, The Times' scoop and the victory for freedom of the press in Judge Gurfein's court could leave bitter aftertastes.

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170 JUN 30 1971

The Washington Post _____
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 The Sunday Star (Washington) _____
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 The New York Times _____
 The Daily World _____
 The New Leader _____
 The Wall Street Journal _____
 The National Observer _____
 People's World _____

Date JUN 21 1971

File 5-800
 65-74060-17

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BRIEFS 6-20 NX

NIGHT

DES MOINES, IOWA (UPI)--THE IOWA CIVIL LIBERTIES UNION HAS WRITTEN TO U.S. ATTORNEY GENERAL JOHN N. MITCHELL TO PROTEST LEGAL ACTION AGAINST THE NEW YORK TIMES BY THE UNITED STATES JUSTICE DEPARTMENT.

THE ICLU CALLED THE JUSTICE DEPARTMENT'S ATTEMPT TO RESTRAIN THE TIMES FROM PUBLISHING A PENTAGON STUDY OF U.S. INVOLVEMENT IN THE VIETNAM WAR "A THREAT TO FREEDOM OF THE PRESS AND A VIOLATION OF THE FIRST AMENDMENT."

JAKARTA (UPI)--PAPER CHINESE DRAGONS PARADED THROUGH THE STREETS OF JAKARTA FOR THE FIRST TIME IN 10 YEARS SUNDAY AT THE CELEBRATION OF THE CITY'S 444TH ANNIVERSARY. THE LATE ~~PRESIDENT~~ SUKARNO HAD BANNED DRAGON PROCESSIONS IN AN EFFORT TO SPEED UP ASSIMILATION OF THE CHINESE IN INDONESIA.

EX 101

REC-24

File 5 - ECH

65-74060 Sub A

65-74060-A
 NOT RECORDED
 145 JUN 30 1971

60 JUL 6 1971

WASHINGTON CAPITAL NEWS SERVICE

13
SYDNEY (UPI)--SIX-THOUSAND ANTIWAR DEMONSTRATORS MARCHED THROUGH SYDNEY SUNDAY TO A RALLY AT WHICH AMERICAN PACIFIST DR. BENJAMIN SPOCK DENOUNCED U.S. PARTICIPATION IN THE VIETNAM WAR. SPOCK SAID THAT BECAUSE OF THE PUBLICATION OF SECRET PENTAGON PAPERS BY U.S. NEWSPAPERS "WE HAVE EVIDENCE OF MUCH GREATER DECEITFULNESS NOW THAN WE EVER HAD BEFORE."

KUALA LUMPUR (UPI)--MALAYSIA ANNOUNCED ESTABLISHMENT OF DIPLOMATIC TIES WITH POLAND SUNDAY. A FOREIGN AFFAIRS MINISTRY ANNOUNCEMENT SAID THE TWO COUNTRIES HAVE DECIDED TO EXCHANGE DIPLOMATIC REPRESENTATIVES TO FURTHER EXISTING ECONOMIC RELATIONS.

WASHINGTON (UPI)--ATTORNEY GENERAL JOHN N. MITCHELL ANNOUNCED SUNDAY THE CREATION OF THE NEW POSITION OF DEPUTY ASSISTANT FOR CONSUMER AND INTERAGENCY AFFAIRS. BRUCE B. WILSON, HEAD OF THE DEPARTMENT'S CONSUMER AFFAIRS SECTION, WILL BE APPOINTED TO THE POST.

LONDON (UPI)--A DISGRUNTLED SHIP-BROKER PERSONNALLY DELIVERED A PROTEST NOTE TO PRIME MINISTER EDWARD HEATH AT A LUNCH AT HEATH'S NO. 10 DOWNING STREET RESIDENCE BY POSING AS A WAITER, IT WAS REVEALED SUNDAY. RONALD XIRONS, WHO WAS HIRED ON A TEMPORARY BASIS TO SERVE AT THE LUNCH, SAID HEATH WAS "EXTREMELY CHARMING" WHEN HE HANDED HIM THE LETTER PROTESTING A FOREIGN SHIPPING CONTRACT. BUT BRITISH SECURITY MEN WERE SHAKEN BY THE INCIDENT.

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Judge Who Backed Post Known For His Controversial Decisions

WASHINGTON, June 19—

Controversial decisions are almost routine for Gerhard Alden Gesell, the Federal District judge who late last night refused a Government request to halt The Washington Post's publication of a series of articles based on a Pentagon study.

It was not the first time that the 61-year-old judge had made a decision of potentially far-reaching consequence. Two years ago, he ruled that the District of Columbia's abortion law was too restrictive, and he broadened it to permit abortions virtually at a physician's discretion. The ruling was not allowed to stand by the Supreme Court.

More recently, the judge, a Democrat and a graduate of Yale Law School, ruled that the United Mine Workers president, W. Anthony Boyle, and several others were guilty of misuse of union welfare funds.

The decision forced Mr. Boyle's retirement as a trustee of the union's welfare and retirement fund.

One friend has said of the judge that perhaps his most impressive quality as a jurist is "his willingness and desire to come to grips with the issue in a case, and to rule on the substance rather than duck it, instead of seizing on a technicality to avoid a ruling."

His incisiveness may be a result of a legal expertise gained during more than 25 years of law practice in Washington, where he was a member and later a partner of Covington & Burling, one of Washington's most renowned law firms.

The white-haired, pink-cheeked judge, the son of the famous pediatrician, Dr. Arnold Gesell, is noted for his equanimity in court, but is said to be a "stickler for protocol" in his chambers.

REC-52

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WAP/EPH

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 The New Leader _____
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 The National Observer _____
 People's World _____

JUN 20 1971

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File 5- 511

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EX-115

REC-52

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NOT RECORDED
170 JUN 30 1971

5 JUL 9 1971

EDITORIAL

Press Freedom Versus Freedom to Suppress

Judge Murray Gurfein's decision in the New York Times case, refusing to enjoin the Times from publishing its "Pentagon Papers," was a courageous ruling for a jurist hearing his first case on the bench. It also was the right one.

It does not mean, unfortunately, that the Times can resume its controversial series today. By order of the United States Court of Appeals in New York, a restraining order against the newspaper has been extended to noon Monday. Thus the Times is blocked from publishing more of the disputed material before next Tuesday.

Tuesday is also the next target day for the Washington Post, which has some Pentagon Papers of its own and has been temporarily restrained by our own U.S. Court of Appeals from publishing more of them.

It is a boiling legal cauldron; no one can say at the moment what finally will be cooked up. It is fervently to be hoped, however, that the ultimate decisions as to the Times, The Post, and other newspapers that may become involved, defeat the government's efforts at repression.

There is a principle here which is vital to the proper functioning of the American system, and it has nothing whatsoever to do with the merits of the published articles derived from a three-year-old Defense Department study of our own Vietnam decision-making process.

The Star has expressed, and may well express again, editorial reservations about the value of those sensational disclosures. Their implication is that the American effort in Vietnam, from the beginning, has been a shabby fraud and that officials of this government were, all along, cynical liars and plotters. Such

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The New York Times _____
The Daily World _____
The New Leader _____
The Wall Street Journal _____
The National Observer _____
People's World _____

Date JUN 20 1971

File 5 - ERH
65-74860 Sub A
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REC-15

56 JUL 7 - 1971

a conclusion, in our view, is not justified on the basis of a partial, selective record of raw contingency plans, memoranda and minutes. The Pentagon Papers are part of the story. The whole story is not so simple or so sad.

But that is another issue. Of more importance at the moment is the titanic legal contest arising out of the government's efforts to prevent publication of the offending articles. The court battles of this past week, and those to come, are certain to have a historic and critical effect on the principle and practice of press freedom in this country.

The Post litigation is too undeveloped

for meaningful comment at this stage. Let us concentrate here on the Times, recognizing that its situation has much in common with that of the Post—or indeed of any newspaper that may be threatened with gag law.

First things first. If the First Amendment to our Constitution has not lost its meaning, the Times had an unqualified right to print its stories. Ethically, it had a responsibility to consider the effect of publication on the nation's security. Legally, it was subject to criminal penalties if publication could be shown to have breached security. But when the government undertook, before the fact, to forbid the Times to report what had been learned, it embarked on a form of repression which has no significant precedent in our history.

True, the only damage to the Times as a result of the four-day publication delay originally imposed by the court was that the Post meanwhile published other pieces of the story. But if Judge Gurfein had escalated his restraining order into a full-fledged injunction yesterday—or if an injunction were to be ordered by a higher court—then the precedent for future repression is plain to see. Does the government suspect that investigation into certain sensitive areas may result in disclosures contrary to the national interest? It may enjoin the press from publication. What areas can be presumed free of the possibility of such government-asserted sensitivity?

It is disingenuous to say, as government spokesmen do, that the present issue arises only because the Times articles are based on "classified" documents. The root principle that would be established were the government to prevail in such a case is that government may forbid a disclosure without even knowing what the disclosure is to be. The manifest danger of such blind censorship resulted in the doctrine, sacrosanct from Blackstone's day, that while the press may be held to legal account for its publications, it must never be subject to "previous restraints" on what it can publish. To impose such restraints, said Blackstone, "is to destroy the freedom of the press."

~~So the~~ Times had a constitutional

right to print its articles. This is not to say, necessarily, that it ~~should~~ have printed them. Knowingly to report material which will damage the security of the nation is not responsible journalism. Such decisions are the hardest that a news executive can face; they involve an agonizing balance of concerns. They cannot be second-guessed by an outside editor not confronted by all the facts and advice—the precise situation—on which the man in the hot seat acted. In this case, there are knowledgeable people, including some involved in the events described, who say flatly that there is no security problem in the material published so far. There are others, including official government spokesmen, who say otherwise, particularly as regards the use of verbatim texts of coded messages.

In any event, the Times has stated editorially that it would not have made the decision it did "if there had been any reason to believe that publication would have endangered the life of a single American soldier or in any way threatened the security of our country or the peace of the world." The Times had three full months in which to test its assumptions as to security. If its editorial faithfully reflects the conclusion that was reached, the Times was bound to publish what it had learned. If the press is serious about its obligation to the public, it cannot allow someone else to decide for it what the public should know.

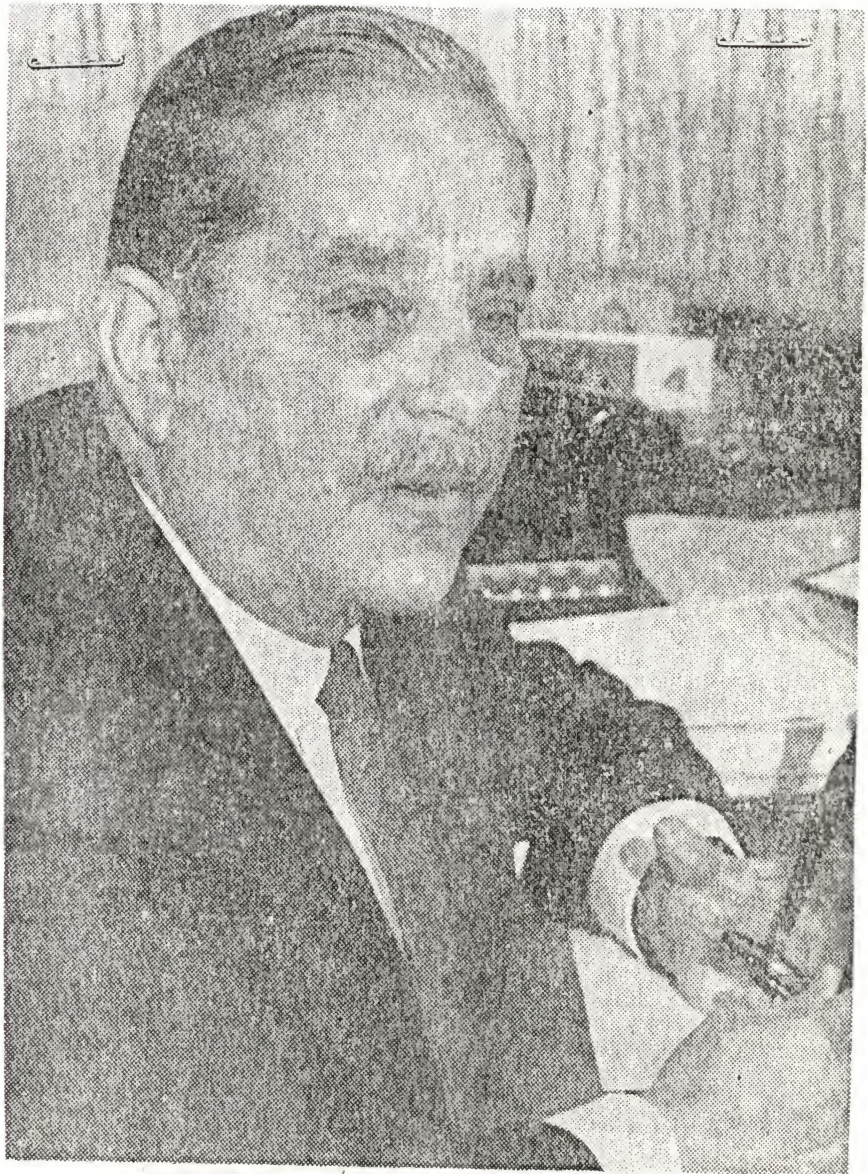
Again, this is not to say that the Times' assessment of the security issue necessarily was correct. Here, at last, is a question of fact which, if the government chooses to press criminal charges, can properly be determined in court. The burden, however, must be on the government to prove that, in fact, security has been violated. It is not enough to establish that some official once marked these documents "secret," even "top secret." A scandalous array of documents is so classified. Their content regularly finds its way into news reports, much of it leaked by government officials.

The alleged security violation, moreover, must be shown to involve the actual safety of the nation. Embarrassment to public officials, present or past, is not a valid security consideration, nor the fact that published disclosures may make it difficult for the government to pursue a chosen course.

The Star does not know whether what the Times has published or may publish will be punishable as a genuine breach of national security. There is ground for suspicion, however, that what the government really fears in this business is damage to its image, a threat to its ease in conducting its affairs, a further erosion in the credibility of officialdom in general.

We say this, to repeat, notwithstanding our doubt as to whether the articles in question present a fair picture of the Vietnam decision-making process.

And we say it notwithstanding a hunch that the public, as this great dispute unfolds, may manifest slight appreciation of the prerogatives of its "arrogant" press. That would be ironic. When the press defends its rights in a conflict of this sort, the principle at stake is the right of the public to be informed about its affairs.



Judge Murray Gurfein

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Decision for Freedom ¹²⁸

District Judge Murray L. Gurfein's decision yesterday denying the Government's plea for a preliminary injunction to bar this newspaper from publishing articles about a secret Pentagon study of the Vietnam war marks a significant victory for press freedom in the United States and for the right of the American people to be informed about the operations of their government.

"A cantankerous press, an obstinate press, an ubiquitous press, must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know," Judge Gurfein declared. "These are troubled times. There is no greater safety valve for discontent and cynicism about the affairs of government than freedom of expression in any form."

After hearing the Government's arguments in a lengthy secret session, the District Judge agreed with this newspaper's contention that publication of the articles and documents did not endanger national security. "Without revealing the content of the testimony," he said, "suffice it to say that no cogent reasons were advanced as to why these documents except in the general framework of embarrassment . . . would vitally affect the security of the nation."

The case now goes to the appeals court which we hope will speedily clear the way for resumed publication of the articles and documents based on the Pentagon study. By any definition of democratic government and freedom of the press, the public is entitled to the information contained in this history, which in fact is indispensable to an understanding of the evolution of American policy in Vietnam.

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 The New York Times F12 _____
 The Daily World _____
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 The Wall Street Journal _____
 The National Observer _____
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JUN 20 1971

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File 5-824

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REC-51

320A

STANTON 6-19 SX
 PALO ALTO, CALIF. (UPI)--DR. FRANK STANTON, PRESIDENT OF THE COLUMBIA BROADCASTING SYSTEM, SATURDAY SAID THE GOVERNMENT ACTION TO SUPPRESS PUBLICATION BY THE NEW YORK TIMES OF A PENTAGON'S SECRET REPORT ON VIETNAM WAS AN "UNPRECEDENTED MOVE OF CENSORSHIP."

STANTON SAID HE AGREED "WHOLEHEARTLY" WITH THE TIMES ARGUMENT THAT FAILURE TO PUBLISH THE INFORMATION WOULD BE A RENUNCIATION OF ITS OBLIGATION UNDER THE 1ST AMENDMENT OF THE CONSTITUTION.

STANTON, WHO HAS BEEN SUBPOENAED TO APPEAR BEFORE A SPECIAL HOUSE COMMITTEE ON INVESTIGATIONS ON JUNE 24, SAID HE WOULD CONTINUE TO RESIST DEMANDS THAT CBS TURN OVER TRANSCRIPTS OF MATERIAL USED IN PREPARING THE DOCUMENTARY TITLED "THE SELLING OF THE PENTAGON."

IN AN ADDRESS TO THE ANNUAL EDITORS CONFERENCE OF THE CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, STANTON SAID:

"IF WE BOW TO THE SUBCOMMITTEE'S OND, WE

EX-114

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WASHINGTON CAPITAL NEWS SERVICE

"IF WE BOW TO THE SUBCOMMITTEE'S DEMAND, WE WOULD BE ACKNOWLEDGING THAT BROADCAST NEWS ORGANIZATIONS CAN NO LONGER REPORT AND ANALYZE THE NEWS IN ACCORDANCE WITH THEIR OWN BEST JUDGMENT, BUT WOULD BE SUBJECT TO CONSTANT SURVEILLANCE FROM CONGRESS.

"IT WOULD SEEM TO BE ONLY A SHORT STEP FROM SURVEILLANCE TO THE PASSING OF LAWS OR THE ADOPTION OF REGULATORY MEASURES TELLING TELEVISION NEWS DEPARTMENTS HOW TO DO THEIR JOBS--AND FROM THAT ONLY ANOTHER SHORT STEP TO A SITUATION WHERE THE GOVERNMENT WOULD BE IN FULL CHARGE AND THE ELECTRONIC MEDIA, THE CREATURE OF GOVERNMENT RATHER THAN THE SERVANT OF THE PUBLIC.

"IF ANY ONE OF THE MEDIA SHOULD BE PERVERTED INTO A VOICE OF GOVERNMENT, THEN ALL THE MEDIA WOULD BE IN GRAVE DANGER."

STANTON SAID HE HOPED FOR SUCCESS IN OPPOSING THE SUBPOENA OF THE DOCUMENTARY MATERIAL AND ADDED:

"BUT WE MUST ALSO CONTEMPLATE WHAT WOULD HAPPEN IF THE HOUSE SHOULD VOTE US IN CONTEMPT, IF OUR CASE SHOULD GO TO THE COURTS AND WE SHOULD MOVE. IN THAT EVENT, TELEVISION AND RADIO WOULD FACE AN UNPRECEDENTED PREDICAMENT. I DO NOT BELIEVE THAT BROADCAST MEDIA CAN CONTINUE TO SERVE THE PUBLIC PROPERLY IN THE FIELD OF NEWS AND INFORMATION, IF IT IS EVER ESTABLISHED IF CONGRESS HAS THE RIGHT TO EXAMINE RAW DATA OF OUR NEWS AND DOCUMENTARIES ... THE MERE FACT THAT SUCH SURVEILLANCE IS POSSIBLE WOULD HAVE A MOST CHILLING EFFECT ON THE ENTERPRISE OF OUR NEWS STAFF.

"IF OUR REPORTERS AND EDITORS KNOW THAT A BROADCAST DISPLEASING TO A CONGRESSIONAL COMMITTEE WILL SUBJECT THEM TO HAVING TO MAKE A DEFENSE OF MATERIALS AND JUDGMENTS--AND TO POSSIBLE CENSURE--THEN THEY HARDLY CAN BE EXPECTED TO FUNCTION AS JOURNALISTS SHOULD AND MUST FUNCTION."

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UPI-80

(VIET REPORT)

NEW YORK--U.S. DISTRICT COURT JUDGE MURRAY I. GURFEIN DENIED TODAY THE JUSTICE DEPARTMENT'S REQUEST FOR A PERMANENT INJUNCTION TO PROHIBIT THE NEW YORK TIMES FROM PUBLISHING A SERIES BASED ON A SECRET PENTAGON STUDY OF THE WAR BUT GAVE THE GOVERNMENT TIME TO APPEAL TO A HIGHER COURT.

IN A 17-PAGE OPINION, GURFEIN SAID: "I FIND THERE IS NO REASONABLE LIKELIHOOD OF THE GOVERNMENT SUCCESSFULLY PROVING THAT THE ACTIONS OF THE TIMES WERE NOT IN GOOD FAITH.

"THERE HAS BEEN AN EFFORT ON THE PART OF THE TIMES TO VINDICATE THE RIGHT OF THE PUBLIC TO KNOW. IT IS NOT A CASE INVOLVING AN INTENT TO COMMUNICATE VITAL SECRETS FOR THE BENEFIT OF A FOREIGN GOVERNMENT OR TO THE DETRIMENT OF THE UNITED STATES.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-43

ADD 1 VIET REPORT, WASHINGTON (UPI-7)

AT MID-MORNING, THE POST'S TOP ATTORNEY SAID THE NEWSPAPER HAD
 DECIDED NOT TO SEEK REVERSAL OF THE APPEALS COURT DECISION IN THE
 SUPREME COURT "AT THIS TIME." ROGER A. CLARK, SAID HE AND HIS STAFF
 WERE "PREPARING TO LITIGATE THE MATTER FULLY BEFORE THE DISTRICT
 COURT" ON MONDAY.

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W. J. Walters

316A

CASE 6-19 NX

SPRING LAKE, N.J. (UPI)--SEN. CLIFFORD O. CASE,
 R-N.J., RANKING REPUBLICAN ON THE SENATE FOREIGN RELATIONS
 COMMITTEE, SAID SATURDAY HE WILL INTRODUCE THREE BILLS
 TO GIVE CONGRESS MORE CONTROL OVER CERTAIN CENTRAL
 INTELLIGENCE AGENCY
 (CIA) AND DEFENSE DEPARTMENT PROGRAMS.

CASE, IN A SPEECH PREPARED FOR DELIVERING AT THE NEW JERSEY PRESS ASSOCIATION, SAID THE MEASURES WOULD:

--EXTEND LIMITATIONS, WHICH NOW APPLY TO THE USE BY THE DEFENSE DEPARTMENT OF ITS FUNDS OVERSEAS, TO ALL U.S. GOVERNMENT AGENCIES, INCLUDING THE CIA;

--PROHIBIT ANY GOVERNMENT AGENCY FROM FUNDING MILITARY OPERATIONS BY ANY COUNTRY OUTSIDE ITS BORDERS WITHOUT SPECIFIC CONGRESSIONAL AUTHORIZATION;

--EXTEND EXISTING LIMITATIONS ON THE DEFENSE DEPARTMENT USE OF SURPLUS MILITARY MATERIAL TO ALL GOVERNMENT AGENCIES

"MY PURPOSE IS TO PLACE SOME OUTSIDE CONTROL ON WHAT HAS BEEN THE FREE-WHEELING OPERATION OF THE EXECUTIVE BRANCH IN CARRYING ON FOREIGN POLICY AND EVEN WAGING FOREIGN WARS," CASE SAID.

THE SENATOR RECENTLY STEPPED UP HIS CRITICISM OF THE NIXON ADMINISTRATION'S POLICY IN SOUTHEAST ASIA.

"TO BE PERFECTLY HONEST, OUR SYSTEM HAS GOTTEN OUT OF WHACK AND IT IS TIME TO RESTORE A BETTER BALANCE," CASE SAID. HE SAID HE WAS "SHOCKED BY THE CYNICAL MANIPULATION OF OUR POLITICAL PROCESSES" REVEALED IN THE PRINTING BY THE NEW YORK TIMES OF A SECRET PENTAGON REPORT ON VIETNAM.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-170

(ELLSBERG)

CAMBRIDGE, MASS.--DANIEL ELLSBERG, IDENTIFIED AS THE MAN WHO SUPPLIED COPIES OF A CONTROVERSIAL PENTAGON STUDY ON U.S. INVOLVEMENT IN SOUTHEAST ASIA TO A NEW YORK TIMES REPORTER, CONTACTED HIS OFFICE TODAY.

PROF. EVERETT HAGEN, DIRECTOR OF THE CENTER FOR INTERNATIONAL STUDIES AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, SAID ELLSBERG, WHO WORKS AT THE MIT FACILITY, MADE THE CALL IN THE MORNING.

HAGEN SAID ELLSBERG TALKED WITH A SECRETARY WHO RELAYED HIS MESSAGES TO HIM "BEFORE 11 IN THE MORNING." THE STAFF DIRECTOR DECLINED TO IDENTIFY THE SECRETARY BECAUSE HE DIDN'T WANT TO INVOLVE HER.

HAGEN ALSO SAID THE NATURE OF ELLSBERG'S WORK AS A RESEARCH ASSOCIATE MEANT HIS TIME WAS PRETTY MUCH HIS OWN AND HE DIDN'T HAVE TO REPORT TO HIS OFFICE IF HE DIDN'T WANT TO.

"HE SAID HE AND HIS WIFE ARE FINE AND ARE IN GOOD SHAPE AND NOT TO WORRY ABOUT THEM," THE DIRECTOR SAID. HAGEN ALSO SAID ELLSBERG TOLD HIM TO "FEEL FREE TO GIVE OUT ANY OF HIS MATERIAL TO THE PRESS."

THE MIT PROFESSOR SAID ELLSBERG'S CALL APPEARED TO ORIGINATE FROM THE BOSTON AREA BUT SAID HE HAD NO IDEA WHERE THE FORMER PENTAGON AIDE WAS STAYING.

ATTEMPTS BY NEWSMEN TO CONTACT ELLSBERG HAVE PROVEN FRUITLESS.

HAGEN MADE THE DISCLOSURE SEVERAL HOURS AFTER HE RELEASED TO NEWSMEN AN ARTICLE ELLSBERG WROTE SEVERAL MONTHS AGO ON VIETNAM. THE ARTICLE WAS RELEASED BECAUSE OF THE DELUGE OF INQUIRIES RECEIVED ABOUT ELLSBERG'S PHILOSOPHY AND WORK, HAGEN SAID.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-49

ADD 1 VIET REPORT, WASHINGTON (UPI-9)
 THE TIMES IN ITS FRIDAY EDITIONS IDENTIFIED ELLSBERG AS ONE OF
 THE PRINCIPAL AUTHORS OF THE REPORT, AND SAID THAT HE AND MOST OF THE
 APPROXIMATELY 36 PERSONS INVOLVED IN PREPARING IT WERE PROMISED
 ANONYMITY IN THE INTEREST OF CANDOR.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-57

(VIET REPORT)

NEW YORK--THE NEW YORK TIMES TODAY DENIED GOVERNMENT CHARGES THAT ARTICLES IT PUBLISHED BASED ON A "TOP SECRET" PENTAGON REPORT ON VIETNAM PREJUDICED THE DEFENSE INTERESTS OF THE UNITED STATES.

IN A BRIEF FILED IN FEDERAL COURT THE TIMES SAID THE GOVERNMENT HAD NOT MADE THE SLIGHTEST EFFORT TO PROVE THAT THE DEFENSE EFFORTS OF THE NATION WOULD BE HARMED BY PUBLICATION OF THE SERIES.

THE GOVERNMENT HAS CHARGED THAT THE TIMES ARTICLES THREATENED THE NATION'S DEFENSE EFFORTS AND JEOPARDIZED THE COUNTRY'S FOREIGN RELATIONS. . MICHAEL HESS, CHIEF OF THE U.S. ATTORNEY'S C.T.L. DIVISION, ALSO CHARGED THAT THE PAPERS USED BY THE TIMES IN PREPARING ITS ARTICLES "WERE STOLEN AND ARE THE PROPERTY OF THE UNITED STATES AND WE ARE ENTITLED TO HAVE THEM RETURNED."

THE TIMES BRIEF CLAIMED THE INFORMATION REVEALED IN THE THREE ARTICLES PUBLISHED SO FAR IN NO WAY ENDANGERED OR INJURED THE AMERICAN ARMED FORCES OR THAT THERE WAS ANY PROSPECT OF FUTURE ARTICLES HAVING THIS EFFECT.

DEPUTY U.S. MARSHALS BARRED THE COURTROOM TO MOST REPORTERS FOR TODAY'S HEARING ON THE GOVERNMENT'S REQUEST FOR A PERMANENT INJUNCTION AGAINST FURTHER PUBLICATION. PROTEST BY THE NEWSMEN THAT THE ISSUE OF FREEDOM OF THE PRESS WAS ON TRIAL AND THAT THE PRESS WAS BEING BARRED FROM COVERING IT WERE IGNORED.

IN ITS BRIEF PRESENTED TO THE COURT TODAY AND MADE AVAILABLE TO NEWSMEN, THE TIMES SAID THAT IN EFFECT ALL IT WAS GUILTY OF WAS PUBLISHING "PART OF AN HISTORICAL RECORD AND, WE SUBMIT, IN DOING SO HAVE SERVED THE NATION AS THE FIRST AMENDMENT INTENDED IT TO."

THE TIMES ALSO FILED WITH THE COURT A NUMBER OF AFFIDAVITS AND DEPOSITIONS TAKEN FROM SEVERAL OF THE WRITERS WHO TOOK PART IN GATHERING THE INFORMATION AND PREPARING THE TOP SECRET PENTAGON REPORT. THE NEWSPAPER ALSO POINTED OUT THAT IN MOST INSTANCES MATERIAL WAS RELEASED TO THE WRITERS WITHOUT RESTRICTIONS.

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WASHINGTON CAPITAL NEWS SERVICE

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UPI-78

ADD VIET REPORT, NEW YORK (UPI-57)

THE NEWSPAPER ACCUSED THE GOVERNMENT OF SEEKING TO ENJOIN THE TIMES FROM PERFORMING ITS FUNCTION AS A NEWSPAPER.

"IT SEEKS TO DO SO WITH RESPECT TO NEWS ARTICLES DEALING WITH THE SINGLE, MOST CONTROVERSIAL WAR IN AMERICAN HISTORY WHICH IS TODAY THE SINGLE MOST CONTROVERSIAL ISSUE IN AMERICAN LIFE."

ALEXANDER M. BICKEL, A YALE LAW PROFESSOR ARGUING FOR THE TIMES, ASKED GURFEIN TO REMOVE THE TEMPORARY RESTRAINING ORDER ON GROUNDS THE WASHINGTON POST AND OTHER NEWSPAPERS HAVE PRINTED THE SAME MATERIAL.

HESS, THE GOVERNMENT ATTORNEY, SAID THE JUSTICE DEPARTMENT IS CONSIDERING SIMILAR ACTION AGAINST OTHER NEWSPAPERS WHO PUBLISHED INFORMATION LABELED TOP SECRET.

TED SORENSEN, A FORMER SPEECH WRITER AND ADVISER TO FORMER PRESIDENT JOHN F. KENNEDY, SAID IN AN AFFIDAVIT THAT HE WAS FAMILIAR WITH GOVERNMENT DOCUMENTS AND THEIR LABELING AND THAT SOMETIMES TOP SECRET STAMPS WERE ROUTINELY APPLIED TO DOCUMENTS WITH ONLY THE BRIEFEST AND LOOSEST CONSIDERATION.

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UPI-9

(VIET REPORT)

WASHINGTON--ANTIWAR CONGRESSMAN PAUL MCCLOSKEY SAYS HE WAS GIVEN DOCUMENTS DEALING WITH A TOP SECRET VIETNAM WAR STUDY BY THE MAN WHO HAS BEEN DESCRIBED AS THE SOURCE OF THE INFORMATION THE NEW YORK TIMES RECEIVED ON THE SUBJECT.

MCCLOSKEY, A CALIFORNIA REPUBLICAN WHO HAS THREATENED TO CHALLENGE PRESIDENT NIXON FOR THE GOP NOMINATION NEXT YEAR OVER THE WAR ISSUE, SAID HE RECEIVED THE DOCUMENTS MORE THAN A MONTH AGO FROM DANIEL ELLSBERG, 40, A FORMER ADVISER AT BOTH THE STATE AND DEFENSE DEPARTMENTS.

ELLSBERG, HOLDER OF A DOCTOR'S DEGREE FROM HARVARD UNIVERSITY, NOW IS A SENIOR RESEARCH ASSOCIATE AT MIT.

HE LAST WAS REPORTED SEEN WEDNESDAY AFTER EATING LUNCH AT THE MIT FACULTY CLUB. THE WASHINGTON POST REPORTED THIS MORNING IT RECEIVED A CALL WEDNESDAY NIGHT FROM A MAN WHO IDENTIFIED HIMSELF AS ELLSBERG. THE NEWSPAPER SAID THE MAN REFUSED TO CONFIRM OR DENY HE HAD LEAKED ANY DOCUMENTS. IT SAID THE MAN INDICATED HE BELIEVED HE WAS UNDER SURVEILLANCE AND WAS CALLING FROM A PUBLIC TELEPHONE BOOTH IN BOSTON.

REPORTERS WHO WENT TO ELLSBERG'S CAMBRIDGE, MASS., APARTMENT THURSDAY FOUND WEDNESDAY'S MAIL STILL IN THE MAIL BOX.

ELLSBERG, DESCRIBED BY ASSOCIATES AS "CONSCIENCE-STRICKEN" BECAUSE HE WAS INVOLVED IN THE ORIGINS OF DECISION-MAKING ON THE VIETNAM WAR, WAS NAMED BY TWO SOURCES AS THE PERSON WHO HAD LEAKED A MASSIVE GOVERNMENT STUDY ON THE WAR TO THE NEW YORK TIMES. REC-51

SIDNEY H. ZION, A FORMER TIMES REPORTER, FIRST NAMED ELLSBERG IN A RADIO INTERVIEW. THE ST. LOUIS POST DISPATCH THEN PUBLISHED A STORY SAYING ELLSBERG HAD BEEN NAMED BY "A SENIOR OFFICIAL OF THE EXECUTIVE BRANCH" AS THE MAN RESPONSIBLE FOR THE LEAK. NOT RECORDED

THE TIMES HAD NO COMMENT ON THE REPORTS. JUL 30 1971

MCCLOSKEY SAID ELLSBERG SENT HIM SOME XEROXED COPIES OF DOCUMENTS AFTER HE MET WITH ELLSBERG AT PRINCETON UNIVERSITY APRIL 19. THE CONGRESSMAN SAID ELLSBERG TOLD HIM HE HAD "INFORMATION RELEVANT TO VIETNAM, IN PARTICULAR, MY CONCERN OVER THE DECEPTION OF CONGRESS BY THE EXECUTIVE BRANCH WITH RESPECT TO VIETNAM."

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60 JUL 6 1971

WASHINGTON CAPITAL NEWS SERVICE

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UPI-100

ADD VIET REPORT, NEW YORK

DEPUTY U. S. MARSHALS WERE FORCED TO BAR MOST REPORTERS FROM THE HEARING WHEN THE COURTROOM BECAME FILLED. THERE WAS NOT ENOUGH ROOM TO ACCOMMODATE THE LARGE INFLUX OF REPORTERS FROM THE VARIOUS MEDIA AND NO PROVISION HAD BEEN MADE FOR THE OVERFLOW.

THIS LED A NUMBER OF NEWSMEN TO PROTEST THAT THE ISSUE OF FREEDOM OF THE PRESS WAS ON TRIAL BUT THE PRESS WAS BEING BARRED FROM COVERING IT.

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58 JUL 1 - 1971

WASHINGTON CAPITAL NEWS SERVICE



DANIEL ELLSBERG
... sought in leak

FBI Seeking Ex-Pentagon Aide in Leak

By Ken W. Clawson

Washington Post Staff Writer

CAMBRIDGE, Mass., June 17—Two FBI agents tried unsuccessfully today to interview Daniel Ellsberg, 40, a former government economist who was a member of the federal task force that prepared a secret study of the Vietnam war that has been leaked to The New York Times.

The FBI agents left the Ellsberg residence on a shady, tree-lined Cambridge street when no one responded to their knock at the door.

Neither the FBI nor the Justice Department would comment, but it was learned that efforts to find Ellsberg were intensified when he was not available this morning.

Ellsberg was publicly named as the source of the secret documents Wednesday night by a former New York Times reporter, Sidney Zion. On a local New York radio show, Zion identified Ellsberg as the person who leaked the documents and said his information came from "impeccable sources."

The New York Times declined to comment on Zion's allegation.

Earlier Wednesday night a man identifying himself as Ellsberg telephoned The Washington Post and refused to confirm or deny he leaked any documents. He indicated that he believed he was under surveillance, and was calling from a public telephone booth in Boston.

In Washington today, Rep. Paul N. McCloskey (R-Calif.) said Ellsberg gave him copies of documents dealing with the same subject more than a month ago, according to United Press International. McCloskey, a war critic, said he could not tell whether the copies he received were part of the 47-volume Pentagon report, but he said they were not stamped secret.

And he added "I cannot remember that anything I have seen is what's been published." He said he had not read the third installment of The Times series, only the first two.

Ellsberg lives at 10 Hilliard St. in Cambridge. For the past year he has been a senior research associate at the center for international studies at Massachusetts Institute of Technology.

Because of Zion's allegations Wednesday night, a few newsmen were at the Ellsberg house this morning when the FBI agents arrived.

During the rest of the day, increasing numbers of media personnel ringed the house and

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The National Observer _____
People's World _____

EX 101

Date **JUN 18 1971**

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File 5. ERH

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170 JUN 30 1971

at noon today an MIT security officer said there had been at least 150 reporters and television cameramen scouring the campus in search of Ellsberg.

A spokesman for MIT said that Ellsberg was on campus Wednesday but he was not seen today.

Meanwhile, in Detroit the Associated Press quoted Ellsberg's father as saying that his son had "every reason" to leak the secret Pentagon study on the war.

"He said in 1967 that he would do everything in his power to get the boys out of there. I thought he has been very consistent," said Harry Ellsberg.

"Holding My Breath"

Although Ellsberg said he doesn't know for a fact that his son was the man who gave the report to The New York Times, the father said: "I've been holding my breath for several days since I heard about this thing. I thought it could have been him."

A brother Harold, a New York insurance executive, told Westchester-Rockland Newspapers today he last saw his brother six months ago and the two had never discussed the Pentagon study.

He said his brother at one time "strongly supported the U.S. war policy" in Vietnam, but changed his mind after working as a civilian aide on the staff of Gen. Edward Lansdale in Vietnam.

"He took a 180-degree turn about — that's how he expressed it to me," said Harry. "I think he became totally disillusioned about the entire U.S. involvement from what he saw."

'52 Harvard Graduate

As the FBI sought to talk with Ellsberg, some government officials were raising the possibility that preliminary drafts of the war study, separate from the 15 official copies, may still exist and could have been the source of The Times series.

Ellsberg graduated summa cum laude from Harvard College in 1952 and later earned master's and doctoral degrees in economics. He joined the Defense Department for about a year as an aide to Assistant Secretary John McNaughton, and late in 1965 went to Vietnam and served as attache at the embassy.

Before his government ex-

perience he had worked at the Rand Corp., the "think tank" in Santa Monica, Calif., which often works on government projects. He returned there in 1967 and subsequently worked on recommendations for Vietnam policy with presidential aide Henry Kissinger.

In 1970 he received his MIT appointment; it already has been extended for next year.

It was not known why Zion, who quit The New York Times in 1969 to become co-editor of Scanlan's, a defunct muckraking magazine, chose to name Ellsberg. While offering no proof, Zion assured Barry Gray, the radio program's moderator, that Ellsberg definitely furnished the Pentagon documents to The New York Times. Later, Zion told The New York Post that The Times had tried to prevent him from revealing Ellsberg's name. Just before the show Zion said that Arthur Gelb, The Times metropolitan editor, called him at Gray's

WMCA studio and asked him whom he was about to name.

"Will you tell me if I'm wrong?" Zion said he replied. He said that Gelb said no, so he refused to tell Gelb anything.

Zion said that after the show Murray Schumach, a Times reporter who was present in the studio, told him that Gelb wanted Zion to know he was "never to set foot in The Times again." The Times did not publish any account of the Zion allegations in its late editions today but did so briefly in Friday's editions.

On the program, Zion was asked how he obtained the information about Ellsberg.

He replied, "Well, just like they won't tell where they got it, I won't tell where I got it; I can't, but I did get it from what I consider to be very impeccable sources."

And he added: "I want to say that I think he did an extraordinary act for the country and that he's to be praised and not condemned."

Freedom and Security

By JAMES RESTON

"Here various news we tell, of love and strife,

Of peace and war, health, sickness, death and life . . .

Of turns of fortune, changes in the State,

The falls of favorites, projects of the great,

Of old mismanagements, taxations new,

All neither wholly false, nor wholly true."

—New London, Conn., Bee,
March 26, 1800.

Great court cases are made by the clash of great principles, each formidable standing alone, but in conflict limited, "all neither wholly false nor wholly true."

The latest legal battle, "*The United States v. The New York Times*," is such a case: The Government's principle of privacy and the newspaper's principle of publishing without Government approval.

This is not essentially a fight between Attorney General Mitchell and Arthur Ochs Sulzberger, publisher of *The New York Times*. They are merely incidental figures in an ancient drama. This is the old cat-and-dog conflict between security and freedom.

It goes back to John Milton's pamphlet, *Areopagitica*, in the seventeenth century against Government censorship, or as he called it: "for the liberty of unlicenc'd printing." That is still the heart of it: the Government's claim to prevent, in effect to license, what is published ahead of publication, rather than merely to exercise its right to prosecute after publication.

Put another way, even the title of this case in the U.S. District Court is misleading, for the real issue is not *The New York Times* versus the United States, but whether publishing the Government's own analysis of the Vietnam tragedy or suppressing that story is a service to the Republic.

It is an awkward thing for a reporter to comment on the battles of his own newspaper, and the reader will make his own allowances for the reporter's bias, but after all allow-

ances are made, it is hard to believe that publishing these historical documents is a greater threat to the security of the United States than suppressing them, or, on the record, as the Government implies, that *The Times* is a frivolous or reckless paper.

The usual charge against *The New York Times*, not without some validity, is that it is a tedious bore, always saying on the one hand and the other, and defending, like *The Times* of London in the thirties, "the Government and commercial establishment."

During the last decade, it has been attacked vigorously for "playing the Government game." It refused to print a story that the Cuban freedom fighters were going to land at the Bay of Pigs "tomorrow morning." It agreed with President Kennedy during the Cuban missile crisis that reporting the Soviet missiles on that island while Kennedy was deploying the fleet to blockade the Russians was not in the national interest.

Beyond that, it was condemned for not printing what it knew about the U.S. U-2 flights over the Soviet Union, and paradoxically, for printing the Yalta Papers and the Dumbarton Oaks papers on the organization of the United Nations.

All of which suggests that there is no general principle which governs all specific cases, and that, in the world of newspapering, where men have to read almost two million words a day and select 100,000 to print, it comes down to human judgments where "all [is] neither wholly false nor wholly true."

So a judgment has to be made when the Government argues for security, even over historical documents, and *The Times* argues for freedom to publish. That is what is before the court today. It is not a black and white case—as it was in the Cuban missile crisis when the Soviet ships were approaching President Kennedy's blockade in the Caribbean.

It is a conflict between printing or suppressing, not military information affecting the lives of men on the battlefield, but historical documents about a tragic and controversial war; not between what is right and what is wrong, but between two honest but violently conflicting views about what best serves the national interest and the enduring principles of the First Amendment.

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JUN 30 1971

Indochina Inquiry Set by Mansfield

By Spencer Rich
Washington Post Staff Writer

Senate Majority Leader Mike Mansfield (D-Mont.) announced definite plans last night for a full-scale Senate investigation of the decisions that led the nation into the Indochina conflict.

Mansfield's decision—stimulated by publication in The New York Times of secret government documents on the Johnson administration's planning for the war—came on the eve of key Senate and House votes on end-the-war amendments, both of which are expected to lose.

In the Senate, the McGovern-Hatfield amendment, requiring a total U.S. military pullout from Indochina by Dec. 31, is virtually certain to lose by 8 to 12 votes in a showdown roll-call this afternoon. It is still possible, however, that some secret com-

promise proposal, less offensive to the Nixon administration, will be put forward with a better chance.

In the House, a vote on the Nedzi - Whalen amendment, also setting a Dec. 31 deadline, will come today or Thursday. Sponsors are claiming 150 to 170 votes, but the opponents are heavily favored to defeat it.

Mansfield said early yesterday that he was "astonished and astounded" at the revelations in the documents published by The Times.

Sen. Henry M. Jackson (D-Wash.), who unlike Mansfield has generally supported the war, also called for a congressional probe. Sen. Stuart Symington (D-Mo.) had made a similar demand for an investigation on Monday.

Mansfield said late yesterday he would definitely hold hearings by his Far East Affairs subcommittee, unless the full Senate Foreign Relations Committee or Armed Services Committee, or a joint unit, should decide to launch such an investigation. "If they don't do it, we will under the principle of the people's right to know," said the Montana Democrat.

"Call it an investigation of the origins of the war or what-you-will," Mansfield said, "it will be on the information revealed in The New York Times."

"I don't intend to issue any subpoenas nor to make any effort to find out" how The Times obtained the classified documents, he said. No date has been set.

Secretary Comments

Secretary of State William P. Rogers told a press conference yesterday that publication of the still-classified documents was "going to cause a great deal of difficulty with governments outside the United States" which might fear "they can't deal with us in any degree of confidentiality."

Rogers said governments (Canada and South Vietnam, it was learned later) were already complaining. In Ottawa, the Associated Press reported, Foreign Secretary Mitchell Sharp

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defended the use of a Canadian member of the International Control Commission for Vietnam to carry messages from the United States to Hanoi in 1964. "This was done with the approval of the Canadian government because we believed it might help to bring an end to the war," he said.

Rogers conceded that "certainly a large segment of the American public feels that the government somehow is not coming clean." He said one reason for this was that promises to end the war by this administration sounded to some like similar promises by past administrations—"the same old line." But he said, "The difference is that we are doing it . . . We are withdrawing from Vietnam."

Senate Discussion

Publication of the documents brought considerable Senate discussion yesterday. Minority Leader Hugh Scott (R-Pa.) said release of the classified documents in The Times was undesirable but is "not harmful to this administration."

He said there is "strong suspicion" that one Democratic faction from the last administration may have leaked the material in order to discredit another faction.

But Sen. Gaylord Nelson (D-Wis.) was quoted as saying, "The documents do clear-

ly show that those who made the ~~decision~~ to deepen our involvement in the war in Vietnam were not only deluding the American public, but . . . themselves."

Sen. Harry Flood Byrd (Indep.-Va.) said he saw no reason why the documents should not now be declassified, and demanded that the Pentagon explain fully why it was refusing to do so and how the documents had come to The New York Times, lest the Defense Department forfeit public confidence in its handling of secret materials.

Jackson, in a meeting with reporters, said he favored Senate hearings on the revelations in the documents, but said he did not think it would be advisable to subpoena former President Johnson, Walt Whitman Rostow or McGeorge Bundy.

He said he was not aware of covert operations being conducted against the North Vietnamese in 1964 by the United States and did not think the nation was lied into war.

"I can't come to the conclusion that because the administration had contingency plans to use troops in Vietnam that we were deceived. They have a million contingency plans," said Jackson.

Former Vice President Hubert H. Humphrey, now a

senator from Minnesota, reportedly said he was "shocked and surprised" by the information in The Times, adding that the reports being published were "never brought to my attention."

Former President Johnson, former Secretary of State Dean Rusk and former Secretary of Defense Robert S. McNamara declined to comment.

The Senate Foreign Relations Committee, it was learned, asked the government without success three times over the past few years to make available to it the documents published in The Times — most recently last April.

Although publication of the documents aroused wide interest, it apparently did not win any new votes for the end-the-war amendment in the Senate. If the McGovern-Hartfield amendment is beaten, other proposals may receive consideration. Sen. Lawton Chiles (D-Fla.) proposed June 30, 1972, cutoff, which would be cancelled automatically if the President reports that North Vietnam refuses to make arrangements for release of U.S. prisoners by then.

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